(24,140)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 426.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS, APPELLANT,

vs.

CANAL-LOUISIANA BANK & TRUST COMPANY AND JONAS HILLER, TRUSTEE OF ESTATE OF DREUIL & COMPANY, ET AL., BANKRUPTS.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Judicial Circuit.

Pleas and Proceedings had and done at a regular term of the United States Circuit Court of Appeals for the Fifth Circuit, begun on Saturday, the 22nd day of November, A. D. 1913, at New Orleans, Louisiana, before the Honorable Don A. Pardee and the Honorable David D. Shelby, Circuit Judges, and the Honorable Waller T. Burns, District Judge.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS, Appellant,

versus

CANAL-LOUISIANA BANK & TRUST COMPANY and JONAS HILLER, Trustee of Estate of Dreuil & Company et al., Bankrupts, Appellees.

Be it remembered, that heretofore, to-wit, on the 18th day of June, A. D. 1913, a transcript of the record of the above styled cause, pursuant to an appeal from the District Court of the United States for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Circuit Court of Appeals for the Fifth Circuit, which said transcript was filed and docketed in said Circuit Court of Appeals as No. 2525, as follows:

(a)

UNITED STATES OF AMERICA.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION.

IN THE MATTER OF

DREUIL & COMPANY, RAYMOND DREUIL, JOSEPH DREUIL, MRS. VIRGINIA RUSSELL, WIDOW OF EMILE DREUIL.

No. 1725. IN BANKRUPTCY.

THE COMMERCIAL NATIONAL BANK OF NEW ORLEANS, Appellant,

versus

THE CANAL-LOUISIANA BANK AND TRUST COMPANY AND JONAS HILLER, TRUSTEE, Appellees.

Messrs. Merrick, Lewis, Gensler & Schwarz, for the Commercial National Bank of New Orleans, Appellant; Messrs. Mooney & Janvier, for the Canal-Louisiana Bank and Trust Company; Messrs. Hall, Monroe & Lemann, for Jonas Hiller, Trustee, Appellees.

APPEAL from the United States District Court, Eastern District of Louisiana, New Orleans Division, to the United States Circuit Court of Appeals for the Fifth Circuit, returnable within thirty (30) days from the 31st day of May, A. D. 1913, at the City of New Orleans, State of Louisiana.

TRANSCRIPT OF APPEAL.

1 PETITION OF COMMERCIAL NATIONAL BANK FOR INJUNCTION PENDENTE LITE AND ORDER.

Filed Feby. 27th, 1913, at 4:30 P. M.

United States District Court, Eastern District of Louisiana.

IN THE MATTER OF

DREUIL & COMPANY, RAYMOND DREUIL, JOSEPH DREUIL, MRS. VIRGINIA RUSSELL, WIDOW OF EMILE DREUIL.

No. 1765. IN BANKRUPTCY.

To the Honorable the Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition of the Commercial National Bank of New Orleans, a corporation organized under and created by the national banking laws of the United States, and domiciled and doing business in the City of New Orleans, respectfully represents:

That the bankrupt firm of Dreuil & Company made, executed and delivered for value, in favor of your petitioner three certain promissory pledge notes, aggregating sixty-five thousand dollars ($65,000.00), more particularly described as follows, to-wit:

1st. Note dated November 7th, 1912, for $25,000, payable on demand.

2nd. Note dated 9th day of December, 1912, for $25,000, payable on demand.

3rd. Note dated December 19th, 1912, for $15,000, payable on demand.

All of said notes being secured by certain pledges of cotton.

That the note of November 7th, 1912, for $25,000, num-

bered one above, is subject to a credit of $4,500, leaving due the sum of $20,500 at the time of the bankruptcy.

That said pledge notes were all secured by pledges of various warehouse receipts and bills of lading for cotton.

That each and all of said notes contained, among other things, the following provisions:

2 "The makers, indorsers, guarantors and sureties of this note hereby severally waive presentment for payment demand, notice of non-payment and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice or previous consent.

This note is secured by pledge and delivery of the securities mentioned on the reverse hereof, and any securities that may be substituted therefor, and any and all other securities that may have been already pledged to this bank. Should said securities decline in value, the maker of this note hereby agrees, within twenty-four hours from demand on him to that effect made by the holder of this note, to furnish and pledge additional securities, satisfactory to the holder of this note, to cover such decline. And the failure or refusal by the maker to furnish such additional securities when so called for, shall at once mature this note and pledge without putting in default.

Should this note not be paid at maturity, or when it becomes due by failure to furnish additional securities, as above provided, or for any other reason, the then holder thereof is hereby authorized to sell the pledged securities at public or private sale without recourse to judicial proceedings, and is hereby irrevocably authorized to transfer any shares of stock or other securities on the books of the company issuing same to purchaser under such public or private sale. The proceeds of the sale of said pledged securities shall be applied (1) to the payment of all costs and commissions for selling, (2) to the payment of this note, in principal and interest and the 5% attorneys fees, below stipulated, and (3) to the payment of any other indebtedness then due or thereafter to become due, up to the sum of two hundred and fifty thousand dollars, ($250,000.00), by the maker of this note to the said Commercial National Bank. The holder of this note shall have the right to purchase the pledged securities at their market value, if there is any market value, or at any judicial or auction sale thereof, or when sold on the Stock Exchange of New Orleans.

The undersigned do hereby further authorize the said bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys no or hereafter in the hands of the said bank on deposit, or otherwise, to the credit of or belonging to the undersigned, whether the said liabilities are then due or not due. Should this note not be paid at maturity or when due, as above, or should it become necessary to employ an attorney to make or enforce the same, or should this note be placed in the hands of an attorney for collection, the maker shall pay the fees of such attorney to be estimated at 5% on the amount then due on this note, which attorney's fees are secured by this pledge. At the maturity of this note, or when otherwise due, as above provided, any money, stocks, bonds or other property of any kind whatsoever, on deposit, or otherwise, to the credit of the maker on the books of said Commercial National Bank, or in its possession, shall at once stand applied to the payment of this note, or any other indebtedness, up to the limit above stated, unless it be otherwise paid.

In the event of the insolvency of the undersigned, this note and all the said liabilities shall become due and be immediately due and payable without demand or notice, notwithstanding any credit or time allowed the undersigned by any instrument evidencing any of said liabilities.

3 That on or about the 17th day of December, 1912, the firm of Dreuil & Company, now the bankrupts, withdrew two hundred and fifty (250) bales of cotton and substituted two hundred and forty-eight (248) bales of cotton to secure said notes, and among said substituted cotton the said firm of Dreuil & Company pledged to petitioner warehouse receipt No. 1941 for ninety (90) bales of cotton marked "O I C O," and warehouse receipt No. 1942 for sixty (60) bales of cotton marked "N O G N," both of the New Planters Press.

Your petitioner shows that the amount due your petitioner on said notes is not paid in full and will not be paid in full by the receipt and sale of the collateral sued for in this case. That among the cotton pledged to your petitioner to secure said notes was a receipt of the Planters Press No. 1941 for ninety (90) bales of cotton marked

"O I C O," and receipt of Planters Press No. 1942 for sixty (60) bales of cotton marked "N O G M."

Now your petitioner shows that on or about December 20th, 1912, the firm of Dreuil & Company withdrew for account of your petitioner from petitioner the Planters Press receipt for 90 bales of cotton marked "O I C O," under an agreement in writing to account to your petitioner for the said cotton or proceeds, said Dreuil & Company thereby taking temporary possession of said cotton for convenience of your petitioner, all of which will more fully and at large appear by reference to a copy of said written agreement called a trust receipt, bearing said date December 20th, 1912, annexed to this petition for greater certainty.

That said defendants herein, Dreuil & Company, then illegally and fraudulently disposed of sixty bales of said cotton, but there are thirty (30) bales of said cotton still on
4 hand in the possession of the trustee, Jonas Hiller; that the marks on said cotton have been changed from "O I C O" to "B J J D," and is now represented by press receipts of the Planters Press, as follows, viz.:

Receipt No. 2094, dated Jan. 8th, 1913, for 20 bales, marked "B J J D."

Receipt No. 2107, dated Jan. 8th, 1913, for 10 bales, marked "B J J D."

Your petitioner further shows that on or about December 28th, 1912, the firm of Dreuil & Company, now the bankrupts, withdrew for account of your petitioner the said Planters Press receipt No. 1942 for 60 bales of cotton marked "N O G N" under an agreement in writing to account to your petitioners for the said cotton or the proceeds, said Dreuil & Company thereby taking temporary possession of said cotton for convenience of your petitioner, all of which will more fully and at large appear by reference to a copy of said written agreement called a trust receipt, bearing said date Dec. 20th, 1912, annexed to this petition for greater certainty.

That the said sixty (60) bales of cotton have been remarked from "N O G N" as follows:

Thirty (30) bales remarked "B P I D."
Thirty (30) bales remarked "F A K D."

That said cotton is now in the Planters Press and represented by warehouse receipts of said Press:

No. 2098, dated Jan. 8th, 1913, for 28 bales marked "FAKD"
No. 2108, dated Jan. 8th, 1913, for 2 bales marked "FAKD"
No. 2102, dated Jan. 8th, 1913, for 12 bales marked "BPID"
No. 2106, dated Jan. 8th, 1913, for 18 bales marked "BPID"

Your petitioner shows that all of said cotton was held by the bankrupts for account of your petitioner, and the possession thereof is due to your petitioner and said property is subject to your petitioner's pledge, and that Jonas Hiller, who has been elected trustee at a meeting of the creditors held on February 17th, 1913, should deliver same to your petitioner.

Your petitioner shows that said trustee refuses to deliver said cotton or the press receipts representing said cotton to your petitioner, alleging that the Canal-Louisiana Bank & Trust Company, a corporation organized under and created by the laws of Louisiana and domiciled and doing business in the City of New Orleans claims to be entitled to said cotton, and your petitioner shows that while said Canal-Louisiana Bank & Trust Co. has no right to said cotton it refuses to permit the trustee to give your petitioner possession thereof.

Wherefore, your petitioner prays that Jonas Hiller be restrained and enjoined pending this suit not to sell the said cotton, or, if the Court determines that said cotton be sold, that said cotton be sold separately, according to its marks, and the proceeds kept separate and apart to abide the decision in this cause; that the Canal-Louisiana Bank & Trust Company and Jonas Hiller, trustee, be cited to answer this petition, and after all due and legal proceedings had, be ordered, adjudged and decreed to deliver to your petitioner the following warehouse receipts of the New Planters Press, named and set out in this petition, all dated January 8th, 1913, as follows:

Receipt No. 2094 for 20 bales of cotton marked "BJJD"
Receipt No. 2107 for 10 bales of cotton marked "BJJD"
Receipt No. 2098 for 28 bales of cotton marked "FAKD"
Receipt No. 2108 for 2 bales of cotton marked "FAKD"
Receipt No. 2102 for 12 bales of cotton marked "BPID"
Receipt No. 2106 for 18 bales of cotton marked "BPID"

and in case said cotton should have been sold, then to deliver

to your petitioner the proceeds of the sale of said cotton and your petitioner prays for such further and general relief as law, equity and the nature of the case may demand.

(Signed) MERRICK, LEWIS,
GENSLER & SCHWARZ,
Attys.

6 Form Adopted by the New Orleans Clearing House Association.

Trust Receipt.

New Orleans, La., Dec. 20th, 1912.

Received of Commercial National Bank the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agress to pay over to the said bank, or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Planters Press No. 1941 O I C O 90 B/C
(Signed) DREUIL & CO.

Marks, numbers and description of collateral pledged.

Act 120 of 1910, Laws of Louisiana.

"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the

State of Louisiana, That any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., That any person violating any of the provisions of the First Section of this Act shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., That all laws or parts of laws contrary to, or inconsistent herewith, are hereby repealed."

7 Form Adopted by the New Orleans Clearing House Association.

Trust Receipt.

New Orleans, La., Dec. 28th, 1912.

Received of Commercial National Bank the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank, or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the

original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Planters Press 1942 N O G N 60 B/C
(Signed) DREUIL & CO.

Marks, numbers and description of collateral pledged.

Act 120 of 1910, Laws of Louisiana.

"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, That any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., That any person violating any of the provisions of the First Section of this Act shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceedings ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., That all laws or parts of laws contrary to, or inconsistent herewith, are hereby repealed."

8 ORDER.

Let the trustee, Jonas Hiller, show cause on Saturday, March 8th, 1913, at 11 A. M., why an injunction pendente lite should not issue as prayed for, in the foregoing petition, and in the meantime let a restraining order issue, restraining the trustee, as prayed for from selling or disposing of the cotton described in the said petition.

February 27th, 1913.

(Signed) RUFUS E. FOSTER, Judge.

Feby. 27/1913.

Service accepted for Jonas Hiller, trustee; all rights fully reserved.

(Sig.) HALL, MONROE & LEMANN,
Attys. for Jonas Hiller, Trustee.

Feby. 27/13.

Service accepted for Canal-La. Bk. & T. Co. All rights reserved.

(Sig.) By MOONEY & JANVIER,
Its Attys.

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9 ANSWER AND RECONVENTIONAL DEMAND CANAL-LOUISIANA BANK AND TRUST COMPANY.

Filed March 8, 1913, at 11:45 A. M.

United States District Court, Eastern District of Louisiana.

In the Matter of
Dreuil and Company, Raymond Dreuil, Joseph Dreuil, Mrs. Virginia Russell, Widow of Emile Dreuil.
No. 1725. In Bankruptcy.

Comes now into court, through undersigned counsel, The Canal-Louisiana Bank and Trust Company, made defendant herein, and for answer to plaintiff's petition denies all and singular the allegations thereof except such as may be specially admitted.

Defendant admits the election and qualification of Jonas Hiller as trustee, as alleged in the petition.

Defendant specially denies that the various acts and doings recited in the petition of the Commercial National Bank constitute or effect a pledge by Dreuil and Company in favor of said plaintiff of the cotton therein described, or of the instruments covering and representing the same, for the reason that at the time it is averred Dreuil and Company substituted said cotton or the Press receipts therefor for other collateral previously pledged to said plaintiff bank to secure a pre-existing debt, said cotton and the negotiable bills of lading therefor had been and were still pledged to this defendant by Dreuil and Company, as will more fully appear by the note dated December 9th, 1912, and the trust receipt dated December 13th, 1912, annexed to this petition as Exhibits "One" and "Two," respectively.

And now assuming the petition of plaintiff in reconvention, defendant avers that it is the holder and owner of several promissory notes made and executed by Dreuil and Company and dated respectively New Orleans, Louisiana, September 27th, 1912, October 9th, 1912, October 14th, 1912, November 4th, 1912, November 6th, 1912, November 27th, 1912, November 29th, 1912, December 2, 1912, December 9th, 1912, December 16th, 1912, each to the order of the Canal-Louisiana Bank and Trust Company, New Orleans, and each payable on demand, which said notes made part hereof will be produced on trial.

That said notes represent a loan of money to the amount of said notes made on the dates thereof by the Canal-Louisiana Bank and Trust Company to said firm of Dreuil and Company.

That all the securities of any kind held by appearer, including those involved herein, to secure the payment of said indebtedness, are not more than sufficient and will not be sufficient to pay the same.

That in order to secure the payment of said notes Dreuil and Company contemporaneously with the execution thereof, transferred and delivered to appearer, among other such securities, the following negotiable railroad bills of lading:

Bill of lading dated Weaterford, December 7th, 1912, for 40 bales of cotton marked N O Q M.

Bill of lading dated Weaterford December 7th, 1912, for 60 bales of cotton marked O I C O.

All of which will more fully appear by said notes, and particularly by the note dated December 9th, 1912, for the sum of thirty thousand ($30,000.00) dollars, upon which said note is indorsed, the securities pledged to secure the payment thereof and from which it appears that said bills of lading hereinabove described were on said date pledged to secure said indebtedness. And that Dreuil and Company in so pledging the aforesaid negotiable railroad bills of lading and other securities thereby transferred to appearer the title and possession of the said bills of lading and the cotton represented thereby.

That, thereafter, in order to conveniently obtain delivery of said cotton from the railroad carrier and to prepare same for sale or shipment abroad, and thus to realize upon the same and accomplish the purpose of the transfer, appearer delivered the said bills of lading representing said 40 bales of cotton marked N O Q M, and said 60 bales of cotton marked O I
11 C O, to said bankrupt firm in trust as agents and for account of appearer, said delivery being made under what is known as a trust receipt; that the delivery of the documents representing said 40 bales of cotton marked N O Q M and said 60 bales of cotton marked O I C O was made on the 13th day of December, 1912, and contemporaneously with said delivery the said firm of Dreuil and Company signed and delivered to appearer a trust receipt, which specified the documents received and declared that the delivery thereof was temporary for convenience of the parties for the purpose aforesaid, and the same were received and were to be held by said bankrupt firm as trustee for appearer. All as will more fully appear by said agreement or trust receipt, annexed hereto and made part hereof for greater certainty marked "Defendant's Exhibit Two."

Appearer avers that, thereafter, to-wit, on or about the 20th day of December, 1912, the above described 60 bales of cotton, originally marked O I C O, were split into 90 bales, and of said 90 bales of cotton there are now 30 bales thereof in the possession of the trustee, Jonas Hiller; that the marks on the said 30 bales of cotton were changed by Dreuil and Company from O I C O to B J J D; that said 30 bales of cotton

so marked are now in the Planters Press in this city and represented by the following warehouse receipts of said Press:

No. 2094, dated Jan. 8th, 1913, for 20 bales marked "BJJD"
No. 2107, dated Jan. 8th, 1913, for 10 bales marked "BJJD"

and that said receipts are in the possession of said trustee.

Appearer avers that on or about the 20th day of December, 1912, the above described 40 bales of cotton originally marked N O Q M were split into 60 bales and were remarked by said firm of Dreuil and Company, 30 bales BPID and 30 bales F A K D; that said cotton is now in the Planters Press and represented by the following warehouse receipts of
12 said Press:

No. 2098, dated Jan. 8th, 1913, for 28 bales marked "FAKD"
No. 2108, dated Jan. 8th, 1913, for 2 bales marked "FAKD"
No. 2102, dated Jan. 8th, 1913, for 12 bales marked "BPID"
No. 2106, dated Jan. 8th, 1913, for 18 bales marked "BPID"

That said receipts are in the possession of Jonas Hiller, trustee of the bankrupts, Dreuil and Company.

Appearer avers there has been no accounting with it by said firm of Dreuil and Company, bankrupts, under the above described trust receipt, dated December 13th, 1912.

Appearer avers that by reason of the premises it has a title to said cotton and to the documents representing the same and a right to the possession therefor.

Wherefore, appearer prays that petitioner's demand be rejected at its cost, and that citation issue herein on the Commercial National Bank, through its proper officer, and on Jonas Hiller, trustee, and that after legal delays and due proceedings had, there be judgment in favor of this appearer ordering, adjudging and decreeing the delivery to appearer of the following warehouse receipts of the New Planters Press, all dated January 8th, 1913, and the cotton represented by said Press receipts, to-wit:

Receipt No. 2094 for 20 bales of cotton marked "BJJD"
Receipt No. 2107 for 10 bales of cotton marked "BJJD"
Receipt No. 2098 for 28 bales of cotton marked "FAKD"
Receipt No. 2108 for 2 bales of cotton marked "FAKD"

Receipt No. 2102 for 12 bales of cotton marked "BPID"
Receipt No. 2106 for 18 bales of cotton marked "BPID"

And in case said cotton should have been sold, then to deliver to this appearer the proceeds of the sale of said cotton. And appearer prays for such other and general relief as law, equity and the nature of the case may require.

(Signed) MOONEY & JANVIER,
Attorneys for Defendant and Plaintiff in Reconvention.

13 ORDER.

Let the foregoing answer and reconventional demand be filed as prayed for and according to law.

New Orleans, March 8th, 1913.

(Signed) RUFUS E. FOSTER, Judge.

New Orleans, March 10th, 1913.

Service accepted.

MERRICK, LEWIS, GENSLER & SCHWARZ,
Attorneys.

14 HEARING ON APPLICATION OF THE COMMERCIAL NATIONAL BANK FOR AN INJUNCTION PENDENTE LITE, AND ORDER REFERRING SAME TO H. J. CARTER, AS EXAMINER, TO TAKE TESTIMONY, ETC.

Extract From the Minutes.

February Term, 1913.

New Orleans, Wednesday, March 12th, 1913.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

In the Matter of

Dreuil & Company, et al., Bankrupts.

No. 1725.

This cause came on this day to be heard upon the application of the Commercial National Bank for an injunction pendente lite herein.

Present: E. T. Merrick, of Counsel for the Commercial National Bank, mover.

Present: J. Blanc Monroe, of Counsel for Jonas Hiller, Trustee.

Present: Mooney & Janvier, Attorneys for the Canal-Louisiana Bank and Trust Company.

Whereupon, it was ordered by the Court that there be a reference to H. J. Carter, Esq., as examiner, to hear the testimony and evidence thereon.

It was further ordered that the restraining order heretofore issued in this cause remain in full force and effect.

15 HEARING ON PETITION OF COMMERCIAL NATIONAL BANK, ETC., AND SUBMISSION.

Extract From the Minutes.

February Term, 1913.

New Orleans, Thursday, May 1st, 1913.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

In the Matter of
Dreuil & Company, et al., Bankrupts.
No. 1725.

This cause came on this day to be heard upon the petition of the Commercial National Bank and the answer and reconventional demand of the Canal-Louisiana Bank & Trust Company, and upon the claim of the trustee, and upon the evidence offered by the respective parties.

Present: Edwin T. Merrick, of Counsel for the Commercial National Bank.
Present: J. Blanc Monroe, of Counsel for Jonas Hiller, Trustee.
Present: Mooney & Janvier, Attorneys for the Canal-Louisiana Bank & Trust Company, Defendant.

And was argued by counsel for the respective parties and submitted, when the Court took time to consider.

16 NOTE OF EVIDENCE IN CONNECTION WITH APPLICATION OF COMMERCIAL NATIONAL BANK FOR INJUNCTION PENDENTE LITE.

Filed May 1, 1913.

United States Dist. Court, Eastern District of Louisiana.

In the Matter of
Dreuil & Company, Bankrupts.
No. 1725.

Commercial National Bank
vs.
Canal Louisiana Bank & Trust Company.

Solicitors for complainant offer the following:

Note of Evidence.

1st Testimony (page 2):
Three (3) notes annexed to referee's report on rule of Commercial National Bank for temporary receivers of bankrupts, filed January 16, 1913.

2nd Testimony (page 3):
Trust receipt dated December 20, 1912, for 90 bales of cotton, covering Planters' Press receipt No. 1941, marked "O I C O."

1st Testimony (page 4):
Trust receipt dated December 28, 1912, for 60 bales of cotton, covering Planters' Press receipt No. 1942, marked "N O G N."

1st Testimony (page 5):
Copy of substitution of collateral agreement.

3rd Testimony (page 5):
Original pickers' list from Sporl's Pickery.

1st Testimony:
Testimony of
J. H. Fulton,
Elkin Moses,
R. J. Bosworth.
(Taken March 12th, 1913.)

2nd Testimony:
Testimony of H. C. Schneider, taken March 24, 1913.

3rd Testimony:
Testimony of Edward J. Stakelum, taken Apl. 1, 1913.

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17 EXHIBIT MARKED "COMMERCIAL NATIONAL A."

Filed April 21, 1913.

$20,500 Due.....

New Orleans, La., November 7th, 1912.

On demand after date, we the signers, indorsers, guarantors and sureties, and each of us in solido, proimse to pay to the order of ourselves, at The Commercial National Bank of New Orleans, twenty-five thousand 00/100 dollars, for value received, with interest thereon at the rate of 7 per cent per annum from date until paid.

The makers, indorsers, guarantors and sureties of this note hereby severally waive presentment for payment, demand, notice of non-payment, and protest, all pleas of devision or discussion, and consent that time of payment may be extended without notice or previous consent.

This note is secured by pledge and delivery of the securities mentioned on the reverse hereof, and any securities that may be substituted therefor, and any and all other securities that may have been already pledged to this bank. Should said securities decline in value, the maker of this note hereby agrees, within twenty-four hours from demand on him to that effect made by the holder of this note, to furnish and pledge additional securities, satisfactory to the holder of this note, to cover such decline. And the failure or refusal by the maker

to furnish such additional securities when so called for shall at once mature this note and pledge, without putting in default.

Should this note not be paid at maturity, or when it becomes due by failure to furnish additional securities, as above provided, or for any other reason, the then holder thereof is hereby authorized to sell the pledged securities, at public or private sale without recourse to judicial proceedings, and is hereby irrevocably authorized to transfer any shares of stock, or other securities, on the books of the company issuing same to purchaser under such public or private sale. The proceeds of the sale of said pledged securities shall be applied (1) to the payment of all costs and commissions for selling, (2) to the payment of this note, in principal and interest and the 5% attorney fees, below stipulated, and (3) to the payment of any other indebtedness, then due or thereafter to become due, up to the sum of two hundred and fifty thousand dollars ($250,000), by the maker of this note to the said Commercial National Bank. The holder of this note shall have the right to purchase the pledged securities at their market value, if there is any market value, or at any judicial or auction sale thereof, or when sold on the Stock Exchange of New Orleans. The undersigned do hereby further authorize the said bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said bank on deposit, or otherwise to the credit of or belonging to the undersigned, whether the said liabilities are then due or not due. Should this note not be paid at maturity or when due as above, or should it become necessary to employ an attorney to make or enforce the same, or should this note be placed in the hands of an attorney for collection, the maker shall pay the fees of such attorney to be estimated at 5% on the amount then due on this note, which attorney's fees are secured by this pledge. At the maturity of this note,
18 or when otherwise due, as above provided, any money, stocks, bonds or other property of any kind whatsoever, on deposit or otherwise to the credit of the maker on the books of said Commercial National Bank, or in its possession, shall at once stand applied to the payment of this note, or any other indebtedness, up t the limit above stated, unless it be otherwise paid.

In the event of the insolvency of the undersigned, this note

and all the said liabilities shall become and be immediately due and payable without demand or notice, notwithstanding any credit or time allowed the undersigned by any instrument evidencing any of said liabilities.

(Signed) DREUIL & CO.

(Com. Nat. "A") No. 4.

On back of note:

Secured by	R/R	B/L for
N U D E	100	
L U C K	100	
D I N	100	
H A R	100	
	27	
A L B A	23	50
	450 B/C	

(Signed) DREUIL & CO.

Com. National A.

19 EXHIBIT MARKED "COMMERCIAL NATIONAL B."

Filed April 21, 1913.

$25,000.00. Due .....

New Orleans, La., Dec. 9th, 1912.

On demand after date, we, the signers, indorsers, guarantors and sureties, and each of us in solido, promise to pay to the order of ourselves at The Commercial National Bank of New Orleans, twenty-five thousand 00/100 dollars, for value received with interest thereon at the rate of 7 per cent per annum from date until paid.

The makers, indorsers, guarantors and sureties of this note hereby severally waive presentment for payment, demand, notice of non-payment, and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice or previous consent.

This note is secured by pledge and delivery of the securities mentioned on the reverse hereof, and any securities that may

be substituted therefor, and any and all other securities that may have been already pledged to this bank. Should said securities decline in value, the maker of this note hereby agrees, within twenty-four hours from demand on him to that effect made by the holder of this note, to furnish and pledge additional securities, satisfactory to the holder of this note, to cover such decline. And the failure or refusal by the maker to furnish such additional securities when so called for shall at once mature this note and pledge, without putting in default.

Should this note not be paid at maturity, or when it becomes due by failure to furnish additional securities, as above provided, or for any other reason, the then holder thereof is hereby authorized to sell the pledged securities, at public or private sale without recourse to judicial proceedings, and is hereby irrevocably authorized to transfer any shares of stock, or other securities, on the books of the company issuing same to purchaser under such public or private sale. The proceeds of the sale of said pledged securities shall be applied (1) to the payment of all costs and commissions for selling, (2) to the payment of this note, in principal and interest and the 5% attorney fees, below stipulated, and (3) to the payment of any other indebtedness, then due or thereafter to become due, up to the sum of two hundred and fifty thousand dollars ($250,000), by the maker of this note to the said Commercial National Bank. The holder of this note shall have the right to purchase the pledged securities at their market value, if there is any market value, or at any judicial or auction sale thereof, or when sold on the Stock Exchange of New Orleans. The undersigned do hereby further authorize the said bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said bank on deposit, or otherwise to the credit of or belonging to the undersigned, whether the said liabilities are then due or not due. Should this note not be paid at maturity or when due as above, or should it become necessary to employ an attorney to make or enforce the same, or should this note be placed in the hands of an attorney for collection, the maker shall pay the fees of such attorney to be estimated at 5% on the amount then due on this note, which attorney's fees are secured by this pledge. At the maturity of this note, or when

otherwise due, as above provided, any money, stocks,
20 bonds or other property of any kind whatsoever, on deposit or otherwise to the credit of the maker on the books of said Commercial National Bank, or in its possession, shall at once stand applied to the payment of this note, or any other indebtedness, up to the limit above stated, unless it be otherwise paid.

In the event of the insolvency of the undersigned, this note and all the said liabilities shall become and be immediately due and payable without demand or notice, notwithstanding any credit or time allowed the undersigned by any instrument evidencing any of said liabilities.

(Signed) DREUIL & CO.

(Com. Nat. "B") No. 5.

On back of note:

Secured by	R/R	B/L for
F U T	100	
F U M	100	
N U Z	100	
C I P L	100	
J B M T	21	
	421	B/C

DREUIL & CO.

Com. National B.

21 EXHIBIT MARKED "COMMERCIAL NATIONAL C."

Filed April 21, 1913.

$15,000.00. Due.....

New Orleans, La., Dec. 19th, 1912.

On demand after date we, the signers, indorsers, guarantors and sureties, and each of us in solido, promise to pay to the order of ourselves at The Commercial National Bank of New Orleans, fifteen thousand 00/xx dollars, for value received, with interest thereon at the rate of 7 per cent per annum from date until paid.

The makers, indorsers, guarantors and sureties of this note hereby severally waive presentment for payment, demand, notice of non-payment, and protest, all pleas of division or discussion, and consent that time of payment may be extended without notice or previous consent.

This note is secured by pledge and delivery of the securities mentioned on the reverse hereof, and any securities that may be substituted therefor, and any and all other securities that may have been already pledged to this bank. Should said securities decline in value, the maker of this note hereby agrees, within twenty-four hours from demand on him to that effect made by the holder of this note, to furnish and pledge additional securities, satisfactory to the holder of this note, to cover such decline. And the failure or refusal by the maker to furnish such additional securities when so called for shall at once mature this note and pledge, without putting in default..

Should this note not be paid at maturity, or when it becomes due by failure to furnish additional securities, as above provided, or for any other reason, the then holder thereof is hereby authorized to sell the pledged securities, at public or private sale without recourse to judicial proceedings, and is hereby irrevocably authorized to transfer any shares of stock, or other securities, on the books of the company issuing same to purchaser under such public or private sale. The proceeds of the sale of said pledged securities shall be applied (1) to the payment of all costs and commissions for selling, (2) to the payment of this note, in principal and interest and the 5% attorney fees, below stipulated, and (3) to the payment of any other indebtedness, then due or thereafter to become due, up to the sum of two hundred and fifty thousand dollars ($250,000), by the maker of this note to the said Commercial National Bank. The holder of this note shall have the right to purchase the pledged securities at their market value, if there is any market value, or at any judicial or auction sale thereof, or when sold on the Stock Exchange of New Orleans. The undersigned do hereby further authorize the said bank at its option, at any time, to appropriate and apply to the payment of any of the said liabilities, whether now existing or hereafter contracted, any and all moneys now or hereafter in the hands of the said bank on deposit, or otherwise to the credit of or belonging to the undersigned, whether the said liabilities are then due

or not due. Should this note not be paid at maturity or when due as above, or should it become necessary to employ an attorney to make or enforce the same, or should this note be placed in the hands of an attorney for collection, the maker shall pay the fees of such attorney to be estimated at 5% on the amount then due on this note, which attorney's fees are secured by this pledge. At the maturity of this note, or when other-
22 wise due, as above provided, any money, stocks, bonds or other property of any kind whatsoever, on deposit or otherwise to the credit of the maker on the books of said Commercial National Bank, or in its possession, shall at once stand applied to the payment of this note, or any other indebtedness, up to the limit above stated, unless it be otherwise paid.

In the event of the insolvency of the undersigned, this note and all the said liabilities shall become and be immediately due and payable without demand or notice, notwithstanding any credit or time allowed the undersigned by any instrument evidencing any of said liabilities.

(Signed) DREUIL & CO.

(Com. Nat. "C") No. 6.

On back of note:

Secured by	R/R	B/L for
G U O F	50	
B A C S	50	
T I D L	50	
S L E V	50	
T R E S	25	
P L E B	25	
	250	B/C

(Signed) DREUIL & CO.

Comm. National C.

23 EXHIBIT MARKED "FULTON 103."

Filed April 21, 1913.

Exhibit "Fulton 103," copy of trust receipt dated December 20, 1912, and filed April 21st, 1913, is the same as trust receipt dated December 20th, 1912, heretofore copied at page 7.

* * * * * * * *

24 EXHIBIT MARKED "FULTON 104."

Filed April 21, 1913.

Exhibit "Fulton 104," copy of trust receipt dated December 28th, 1912, and filed April 21st, 1913, is the same as trust receipt dated December 28th, 1912, heretofore copied at page 8.

* * * * * * * *

25 EXHIBIT MARKED "FULTON 100."

Filed April 21, 1913.

Filed April 21st, 1913.

Form adopted by the New Orleans Clearing House Association.

Copy.

Trust Receipt.

Fulton 100.

New Orleans, La., Dec. 19th, 1912.

Received of Commercial National Bank, the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Marks, numbers and description of collateral pledged.
819 Shreveport 12/5 121 F U T.....100
820 Shreveport 12/6 122 F U M.....100

200

(Signed) DREUIL & CO.

Act 120 of 1910, Laws of Louisiana.
"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., that any person violating any of the provisions of the first section of this act, shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., that all laws or parts of laws contrary to, or inconsistent herewith are hereby repealed."

26 EXHIBIT MARKED "F 101."

Filed April 21, 1913.

Filed April 21st, 1913.

Form adopted by the New Orleans Clearing House Association.

Copy.

Trust Receipt.

F 101.

New Orleans, La., Dec. 26th, 1912.

Received of Commercial National Bank, the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Marks, numbers and description of collateral pledged.

783 Hearne 11/27/12 313 K Y J D..... 25
784 Hearne 11/27/12 314 C I J K..... 25
837 Waetherford 12/4 E 151 J B M T..... 21

71 B/C

(Signed) DREUIL & CO.

Act 120 of 1910, Laws of Louisiana.
"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged to him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., that any person violating any of the provisions of the first section of this act, shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., that all laws or parts of laws contrary to, or inconsistent herewith are hereby repealed."

27 EXHIBIT MARKED "FULTON 102."

Filed April 21, 1913.

Filed April 21st, 1913.
Form adopted by the New Orleans Clearing House Association.

Copy

Trust Receipt

Fulton 102.

New Orleans, La., Dec. 23rd, 1912.

Received of Commercial National Bank, the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Marks, numbers and description of collateral pledged.
793 Vicksburg, 11/30/12 154 N I G ..... 75 B/C
879 Hattiesburg, 12/16/12 67 G E E .....48 B/C

123 B/C

(Signed) DREUIL & CO.

Act 120 of 1910, Laws of Louisiana.
"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., that any person violating any of the provisions of the first section of this act, shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., that all laws or parts of laws contrary to, or inconsistent herewith are hereby repealed."

28 EXHIBIT MARKED "FULTON 105."

Filed April 21, 1913.

Filed April 21st, 1913.

Form adopted by the New Orleans Clearing House Association.

Copy.

Trust Receipt.

Fulton 105.

New Orleans, La., Dec. 20th, 1912.

Received of Commercial National Bank, the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the under-

signed hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Marks, numbers and description of collateral pledged.
709 Merigold 11/6 L I Z..... 29 B/C
826 Corinth 12/6 98 C I P L.....100 B/C

129 B/C

(Signed) DREUIL & CO.

Act 120 of 1910, Laws of Louisiana.
"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., that any person violating any of the provisions of the first section of this act shall be guilty of a felony, and, on conviction, shall be impris-

oned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., that all laws or parts of laws contrary to, or inconsistent herewith are hereby repealed."

29 EXHIBIT MARKED "FULTON 106."

Filed April 21, 1913.

Filed April 21st, 1913.
Form adopted by the New Orleans Clearing House Association.

Copy.

Trust Receipt.

Fulton 106.

New Orleans, La., Dec. 20th, 1912.

Received of Commercial National Bank, the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank.

Marks, numbers and description of collateral pledged.
B A C S.....50 B/C
(Signed) DREUIL & CO.

Act 120 of 1910, Laws of Louisiana.
"An Act

In reference to the withdrawal of collateral pledged to a bank, making it a felony to use the same, when so withdrawn, for any unlawful purpose, and providing penalties therefor.

Section 1. Be it enacted by the General Assembly of the State of Louisiana, that any customer of any bank or banking institution, savings bank or trust company, organized under the laws of this State, or of the United States, or of a private banker doing business in the State, who is allowed to withdraw collateral pledged by him on a trust or other form of receipt, and who sells or otherwise disposes of same for any other purpose than that of paying his indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payment for the value thereof, shall be guilty of a felony, and any one of the above acts shall be considered as prima facie evidence of criminal intent.

Section 2. Be it further enacted, etc., that any person violating any of the provisions of the first section of this act, shall be guilty of a felony, and, on conviction, shall be imprisoned at hard labor for not less than two years and not exceeding ten years, in the discretion of the Court.

Section 3. Be it further enacted, etc., that all laws or parts of laws contrary to, or inconsistent herewith are hereby repealed."

30 EXHIBIT MARKED "FULTON #107."

Filed April 21, 1913.

Substitution of Collateral.

New Orleans, Dec. 17th, 1912.

Received from The Commercial-National Bank, of New Orleans, the securities listed below:

And we herewith deposit the following securities in substitution, under the same terms of hypothecation.

Quantity.	Trust Receipt	No. of Certificate.	Value.
Nov. 29th	B/L	100	B/C
Dec. 9th	Press receipt	100	
Dec. 10th	B/L	50	
		250	
T I A D.....		34	O B/L
G E E.....		48	R. R. B/L
P P P.....		16	
O I C O.....		90	Press Receipt
N O G M.....		60	
		248	
		2	let go
		250	

Which are pledged as security for loans.

(Signed) DREUIL & CO.

Fulton #107.

31 EXHIBIT IN CONNECTION WITH APPLICATION OF COMMERCIAL NATIONAL BANK FOR INJUNCTION PENDENTE LITE.

Filed May 1st, 1913.

J. A. Sporl Cotton Pickery,
1335 Chippewa Street and 3014 Dauphine Street.

New Orleans, Dec. 16th, 1912.

	Range
Planters Press	A A
	Z Z
	F F
	K I

Please compress and send on
O I C O 60 B/C made into 90 B/C excessive 30.
N O G M 40 B/C made into 60 B/C excessive 20.
100 B/C made into 150 B/C excessive 50.
Range.
a/c Dreuil & Co., per Ed J. Sporl.

32 TESTIMONY ON BEHALF OF COMMERCIAL NATIONAL BANK ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Filed May 1, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of:

Dreuil & Company, Bankrupts.

No. 1725.

Testimony taken in the above numbered and entitled cause before Henry J. Carter, Esq., examiner, on behalf of the Commercial National Bank in the matter of the injunction pendente lite on the trustee of the bankrupts, on the 12th day of March, 1913.

Appearances:

Mr. Edwin T. Merrick, Solicitor for the Commercial National Bank.

Mr. Henry Mooney, for the Canal-Louisiana Bank & Trust Company.

Mr. J. Blanc Monroe, for the Whitney Central National Bank.

33 New Orleans, La., March 12, 1913.

J. H. FULTON, witness, sworn and examined on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:

Q. What is your name?

A. J. H. Fulton.

Q. What is your position?

A. President of the Commercial National Bank.

Q. You were such during the year 1912 and 1913?

A. Yes, sir.

Q. Did the bankrupts at the time of their failure, Dreuil & Company, owe any money to the Commercial National Bank?

A. Yes, sir; $60,500.00.

Q. How is it represented?

A. By three notes, three demand notes.

Q. What is the amount of those three notes?

A. $15,000.00, $25,000.00, and $20,500.00.

Q. That is, the $25,000.00 is subject to a credit of—

A. $4500.00.

Q. These are the notes which were signed by Dreuil & Company?

A. Yes, sir; the originals are in my hands.

Offer.

Mr. Merrick:

I offer in evidence the three original notes, and ask permission to substitute the three copies thereof, already on file in the bankruptcy proceeding, and annexed to the referee's report on the rule of the Commercial National Bank, filed January 16, 1913.

Q. These copies are copies of the originals, are
34 they not?

A. They were already proved by me before.

Q. They are the same ones?

A. Yes, sir.

Q. Have those notes been paid?

A. No, sir.

Q. Will the amount which you are seeking to recover in those notes make the bank whole?

A. No, sir.

Q. I show you a trust receipt dated December 20, 1912, for Planters' Press receipt No. 1941, for 90 bales marked O I C O. Is that the original trust receipt?

A. Yes, sir.

Q. Signed by Dreuil & Company?

A. Yes, sir.

Q. Had this cotton been pledged to the bank to secure these notes?

A. Yes, sir.

Offer.

Mr. Merrick:

I offer in evidence the original trust receipt dated December 20, 1912, for 90 bales of cotton, covering Planters' Press receipt No. 1941, marked O I C O, and I ask permission to substi-

tute a copy thereof and file it in evidence in connection with this testimony.

Q. I show you a trust receipt dated December 28, 1912, for 60 bales of cotton, N O G N, Planters' Press receipt No. 1942, signed by Dreuil & Company. Is that the original trust receipt?

A. Yes, sir.

Q. Was that cotton given up to Dreuil & Company on that trust receipt?

A. Yes, sir.

35

Offer.

Mr. Merrick:

I offer, introduce and file in evidence the trust receipt bearing date December 28, 1912, for 60 bales of cotton marked N O G N, Planters' Press No. 1942, and ask leave to substitute and file a copy in lieu of the original, which is consented to by the attorneys.

Q. Has that cotton taken out on that trust receipt by Dreuil & Company, that is, the 90 bales of cotton marked O I C O, ever been returned to the bank?

A. No, sir.

Q. Has the bank ever received the proceeds thereof?

A. No, sir.

Q. Has the 60 bales of cotton marked N O G N, taken out on December 28, 1912, by Dreuil & Company, ever been returned to the bank?

A. No, sir.

Q. Has the bank ever received the proceeds thereof?

A. No, sir.

Cross-Examination.

By Mr. Monroe:

Q. Have you got a memorandum, or will you send us a memorandum, showing the credits that the Commercial Natioanl Bank had received on this $60,500.00 indebtedness since the bankruptcy?

A. Since the bankruptcy?

Q. I want you to send me a statement showing just how you stand to-day?

A. All right.

36 By Mr. Merrick:

Q. Will the collection of all the cotton, or its proceeds, that you are suing for, from Dreuil & Company, in all the cases in which the Commercial National Bank is interested, including a suit that you contemplate bringing against Cornille & DeBlond, pay the bank all its indebtedness?

A. No, sir.

By Mr. Monroe:

Q. Do you know when that press receipt No. 1941 for O I C O, 90 B/C, was pledged to you?

A. December 17th.

Q. And that press receipt No. 1942?

A. They were both pledged the same day. O I C O, 90 bales, and N O G N, 60 bales, were pledged the same day, under their signature. We have a specific pledge on these two, you know, in substitution.

By Mr. Merrick:

Q. You say that the 90 bales O I C O and the 60 bales N O G N were substituted on December 17th for other collateral. Will you state how the amount of substituted collateral compares with the amount of collateral which was delivered to Dreuil & Company on that day?

A. We surrendered them 250 bales and got back 248 in substitution.

Q. Is the document which you show me the substitution referred to?

A. Yes, sir.

Offer.

Mr. Merrick:

I offer in evidence the original, and ask permission to substitute a copy thereof.

37 ELKIN MOSES, witness sworn and examined on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:

Q. What is your name?

A. Elkin Moses.

Q. I show you trust receipt dated December 20, 1912, for 90 bales of cotton marked O I C O, Planters' Press receipt No. 1941. Will you please state if any of that cotton is in the hands of the receivers?

A. Not marked O I C O. The records show that on December 28, 1912, 30 bales originally marked O I C O were re-marked B J J D, and were shipped on the Steamship Virginie, for Havre, for account of Dreuil & Company.

Q. Did they go to Havre?

A. They did not.

Q. Where are they now?

A. They were sent back to the Planters' Press, which press issued other receipts, No. 2094, dated January 8, 1913, for 20 bales, and No. 2107, dated January 8, 1913, for 10 bales, both receipts being for account of the receivers of Dreuil & Company.

Q. How was the cotton marked?

A. B J J D.

Q. And these receipts are now in the hands of the receivers?

A. Yes, sir.

Q. Now, I show you a trust receipt dated December 28, 1912, for Planters' Press No. 1942, N O G N, 60 bales of cotton. Will you tell me if any of that cotton is in

38 the hands of the receiver?

A. N O G N, that mark is a little complicated. The records of Dreuil & Company show that on December 28, 1912, there were 60 bales N O G N, re-marked as follows: 30 bales marked B P I D and 30 bales marked F A K D. They were sent to the Steamship Virginie, on account of Cornille & DeBlond, were recovered by the receivers, and sent back to the Planters' Press, who issued the following receipts, all dated January 8, 1913, and made out in the name of the receivers of Dreuil & Company: No. 2098, 28 bales, F A K D; No.

2108, 2 bales, F A K D; No. 2102, 12 bales B P I D; No. 2106, 18 bales, B P I D. All the receipts are in the possession of the trustee.

Q. Do the books of Dreuil & Company show that they received the trust receipts from the Commercial National Bank for this cotton marked O I C O and N O G N?

A. The books show that on December 20th they withdrew Planters' Press receipt No. 1941 for 90 bales, O I C O.

Q. From whom?

A. From the Commercial National Bank. And on December 28th, that they withdrew from the same bank Planters' Press receipt No. 1942, calling for 60 bales N O G M.

Cross-Examination.

By Mr. Monroe:

Q. The books show, do they not, that they got this O I C O cotton from the pickery on December 20, 1912?

A. The entry in the classer's report book No. 6, folio 296, shows that O I C O, 60 bales, was made into 90 bales. The entry was made on December 20, 1912.

Q. And the books show that the Commercial National Bank had already a trust receipt for 90 bales marked O I C O, on December 17th, do they not?

39

A. Yes, sir.; and so testified to.

Q. The books also show that this N O G N cotton was split up from 40 bales to 60 bales, in the pickery, on December 20, 1912, do they not?

A. The same entry appears on December 20, 1912, that N O G N 40 bales into 60 bales.

Q. Now, the Commercial National Bank had a document pledged to it on December 17th calling for how many bales of N O G N?

A. 60 bales N O G N.

Q. So that the Commercial National Bank already had 90 and 60 bales of O I C O and N O G N, respectively, three days before, according to the books of Dreuil & Company, these lots of 40 and 60 were made up, respectively, into 60 and 90?

A. That is exactly what the books show.

By Mr. Mooney:

Q. Taking up the first lot of cotton, which was originally

marked O I C O, what do the books of Dreuil & Company show as to its receipt, and what was done with it upon its receipt by Dreuil & Company?

Objection.

Mr. Merrick:

I object to this evidence as absolutely irrelevant; and it is agreed and understood that this objection shall apply to all testimony in this case upon the same line.

A. The books of Dreuil & Company show that on December 9th the Canal-Louisiana Bank was given a bill of lading calling for 60 bales O I C O. This bill of lading was
40 withdrawn on a trust receipt dated December 13, 1912. On December 17th the Planters' Press issued their receipt No. 1941 for 90 bales of O I C O, which was pledged to the Commercial National Bank, and withdrawn from the Commercial National Bank under a trust receipt, on December 20, 1912.

Q. Then, as I understand it, the cotton which you have testified about in response to questions asked you on behalf of the Commercial National Bank is the identical cotton that was pledged to the Canal-Louisiana Bank by bills of lading therefor, on the 9th of December, 1912. Is that correct?

A. Yes, sir.

Q Now, will you please take up the history of the second lot, which was originally marked N O Q M?

A. On December 9, 1912, a bill of lading for 40 bales marked N O Q M was pledged to the Canal-Louisiana Bank, and withdrawn on trust receipt, December 13, 1912. On page 296 of classer's report book No. 6, dated December 20, 1912, there is an entry showing that 40 bales of N O G N were made into 60 bales. On December 17, 1912, Dreuil & Company pledged to the Commercial National Bank Planters' Press receipt No. 1942 calling for 60 bales N O G M, which was withdrawn on trust receipt, December 28, 1912. On page 302 of classer's report book No. 6, December 28, 1912, there is an entry showing that 60 bales marked N O G N were re-marked into 30 bales B P I D and 30 bales F A K D.

Q. Those 60 bales, the last you mentioned, were covered by Planters' Press receipts of January 8th for 60 bales?

A. Yes, sir.

41 Q. 30 bales being marked F A K D and 30 bales being marked B P I D; is that correct?

A. Yes, sir.

Q. Now, can you tell from the books of Dreuil & Company whether or not the cotton which is covered by the press receipts just referred to is the identical cotton originally marked N O Q M, being 40 bales pledged to the Canal-Louisiana Bank, according to your statement from the books, on the 9th of December, 1912?

A. No, that is the only entry on which N O Q M appears pledged to the Canal-Louisiana Bank.

Q. Is there any entry in that book to show what became of the N O Q M, unless the history which you have given be the history of the N O Q M?

A. None.

Q. Is there anything in the books of Dreuil & Company to show when or how they came into the possession of cotton marked N O G M, referred to by you in your testimony, or the cotton marked N O G N?

A. Nothing, except the entries in the books as testified to already.

Q. So that unless these marks are interchangeable marks, N O Q M ceased to exist, according to their books?

A. Yes, sir.

Q. And according to these same books, unless these marks are interchangeable marks, there is nothing to show when or where or how they acquired the N O G N cotton or the N O Q M cotton, is there?

A. Nothing at all.

Q. You have made a very thorough examination of the books of the bankrupt firm, have you not?

A. Only as far as the location of the cotton is

42 concerned, in the general books.

Q. Well, these particular books from which you have testified?

A. I have.

Q. Is there anything in the books of Dreuil & Company to show that at the time they pledged to the Commercial National Bank 60 bales of cotton marked N O G N, that Dreuil owned any cotton of that mark?

A. The books of Dreuil & Company show N O G M as pledged, not N O G N.

Q. Do the books of Dreuil & Company show whether Dreuil owned any cotton, at the time of the pledge of the cotton, marked N O G N?

A. No, sir.

By Mr. Merrick:

Q. Do the books of Dreuil & Company show that they owned any cotton marked N O G M?

A. No, sir.

Q. Didn't you testify that the books show that this particular cotton was pledged, N O G M, to the Commercial National Bank, on December 17th?

A. Yes, sir.

Q. Have you ever had any N O G N cotton?

A. The first entry showing N O G N is on December 20th, page 296, showing 40 bales of N O G N were split into 60 bales.

Q. That is N O G N?

A. Yes, sir.

Q. Does the Planters' Press receipt No. 1942 call for any mark?

A. The only entry that I see of Planters' Press receipt No. 1942 is in the pledge book, showing that on December 17th Planters Press receipt for 60 bales N O G M was pledged to the Commercial National Bank.

43

Q. I show you the pledge of Dreuil & Company. Is that the handwriting of Dreuil & Company? You know their handwriting, do you not?

A. That is the Dreuil signature.

Q. You know of no other cotton covered by Planters Press receipt No. 1942 than N O G M?

A. I do not.

Q. Now, you testified something about this cotton being in the pickery at a certain time. Where did you get your dates from?

A. There is no date that I know of relative to when the pickery had it.

Q. Then how can you state that the pickery had this cotton at a certain time?

A. Because all the cotton that was sent down there to be

split was sent to the pickery to be re-baled. I never testified as to the date it was sent to the pickery, not knowing it.

Q. You do not know when it was sent to the pickery?

A. Absolutely not.

Q. Is it not the custom to take cotton on a bill of lading and send it to the pickery before sending it to the press?

A. Very often.

Q. Can you tell me by looking at these books when it was in the pickery?

A. No, sir.

By Mr. Monroe:

Q. The two books which you have before you, being the classer's book No. 6, page 296, and the pledge book,
44 which I will mark X, page 120, shows that the Commercial National Bank had press receipt No. 1942 for 60 bales of cotton marked N O G M, on December 17, 1912, and the classer's book shows that the cotton N O G N was changed from 40 bales into 60 bales, under date of December 20, 1912, does it not?

A. It does.

Q. The classer's book is supposed to be written up from day to day, is it not?

A. So I am informed, yes, sir.

Q. Who wrote the classer's book up?

A. Mr. Bosworth. That is his autograph, R. J. B.

Q. Therefore, is [if] the classer's book is correctly written up, the N O G N, 60 bales, came into being as of date December 20, 1912?

A. Yes, sir; if it is written up concurrently with the occurrence.

Q. Now, the same pledge book shows that O I C O, 90 bales, was in the hands of the Commercial National Bank on December 17, 1912, does it not?

A. Yes, sir.

Q. The classer's book, page 296, shows that as of date December 20, 1912, the 90 bales O I C O came into being for the first time, being made up from 60 bales O I C O?

A. Yes, sir.

Q. The classer's book also shows an entry reading O I C O equal 60 X, Little, out of 90 splits. What does that mean?

A. It means there were 60 bales originally marked O I C O.

Q. What is the X Little out of—

A. Little is the buyer's name, over in Texas.

Q. Now, then, let us see what the Canal-Louisiana Bank had to do with this. They got a bill of lading, according to the books, on December 9th, for 60 bales marked O I C O, did they not?

45

A. They did.

Q. And then on December 21st they got back exchange for 40 bales N O G N and 20 bales O I C O, or a total of 60 bales?

A. They bought that exchange.

Q. What became of the proceeds of that?

A. It went into the general pot.

Q. What do you mean by the general pot?

A. I mean they used it up in their regular course of business.

Q. The credit went to the Canal-Louisiana Bank?

A. No, sir; it went to the credit of cotton account. Just as if they sold that much cotton and credited their account known as cotton account with the proceeds of the specific cotton.

Q. Then you cannot trace the proceeds of this particular 60 bales?

A. Yes, sir; the proceeds can be easily traced. The cashier's book shows, as I stated, that they sold the exchange for, not only that 60 bales, but a few others in that lot, to the Canal-Louisiana Bank. The Canal-Louisiana Bank either credited their account or gave them the amount of money, which they put in their regular books and used it up for the payment of debts or purchases of cotton, or other things, but did not apply it specifically to the payment of any bank, or the amount due any bank.

Q. Now, both of these lots of cotton after leaving the two banks went into the pickery, did they not? One lot of 40 bales, N O Q M, or N O G N possibly, was made into a 60 bale lot, and one lot of O I C O, 60 bales, was made into a 90 bale lot?

46

A. Both lots eventually went to the Planters' Press.

Q. They went—

A. They first went to the pickery.

Q. And there were 40 bales put in and 60 bales came out, and 60 bales put in and 90 bales came out?

A. Correct.

Q. Have you any idea, or do the books show whether there

was not some other cotton mixed up in this to make up the difference between 40 and 60 and 90?

Objection.

Mr. Merrick:

Objected to as leading and inadmissible.

Obection.

Mr. Mooney:

Same objection on behalf of the Canal-Louisiana Bank.

Agreement:

It is agreed that this objection shall apply to all testimony on this line.

A. They do not.

By Mr. Merrick:

Q. The Commercial National Bank had in its possession Planters' Press receipt No. 1942 for 60 bales of cotton marked N O G N or N O G M. There is the original receipt. Now, what I want to know is, on December 8th what became of that cotton?

A. 60 bales marked N O G N were re-marked on December 28, 1912, as per classer's report book No. 6, into 30 bales B P I D and 30 bales F A K D. According to the pledge book, on December 28th Dreuil & Company withdrew on
47 trust receipt, from the Commercial National Bank, Planters' Press receipt No. 1942 calling for 60 bales N O G M.

Q. On December 20th Dreuil & Company withdrew Planters' Press receipt No. 1941, for 90 bales of O I C O. What became of those 90 bales?

A. According to the classer's book, folio 296, 40 bales were re-marked N O G N; 20 bales kept the same mark, O I C O. They form part of a 100 bale lot, the exchange on which was sold to the Canal-Louisiana Bank December 21, 1912, leaving 30 bales of O I C O still in the Planters' Press.

Q. Marked how?

A. O I C O. On December 28, 1912, classer's book, folio 302, shows that 30 bales of O I C O were re-marked B J J D.

Q. They are represented now by the press receipts which you have in your original testimony mentioned?

A. Yes, sir.

By Mr. Monroe:

Q. That is No. 2194 and 2107?

A. Yes, sir.

By Mr. Mooney:

Q. The lettering of this cotton N O G N and N O G M is apparently interchangeable and refers to the same cotton on those books?

A. That is a matter of opinion. I believe it is.

Q. Well, you have just read from the books where cotton marked N O G M was pledged to the Commercial National Bank, and you have an entry there for N O G N cotton corresponding in number of bales and in history to that marked N O G M, have you not?

A. Yes, sir.

48 Q. And, as I asked you on your cross-examination, if N O G N and N O G M are not cotton that was marked N O Q M. There is no record in Dreuil & Company's books where the N O G N or N O G M came from, is there?

A. No, sir.

Q. And no record of what became of N O Q M?

A. No, sir.

By Mr. Monroe:

Q. You have not seen any of the physical cotton at all?

A. No, sir.

Q. And on December 20, 1912, did Dreuil & Company have more than 150 bales of cotton on hand?

A. Under pledge?

Q. Of any kind?

A. Oh, yes, considerably more, pledged and unpledged.

Q. And on December 28th, pledged and unpledged they had even more than 150 bales?

A. Considerably more.

Q. They had upwards of 1,000?

A. Yes, sir.

R. J. BOSWORTH, witness, sworn and examined on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:

Q. What is your name?

A. R. J. Bosworth?

49 Q. You were the classer of Dreuil & Company, were you not?

A. Yes, sir.

Q. And the time of their bankruptcy and for two or three months before?

A. For several years before.

Q. I show you an agreement of substitution of collateral, dated December 17th, for 90 bales of cotton, O I C O, and 60 bales, N O G N, among other collateral substituted. Will you please look at your classer's books and tell me if it was in the pickery?

A. This book here won't show it.

Q. Just look at it and see.

A. This cotton was withdrawn from which ever bank the bills of lading were in. You got that out on the date of the trust receipt.

By Mr. Monroe:

Q. December 13th?

A. It was that same day that the cotton was sent into the pickery.

Q. How do you know that, if you do not even know what day it was sent to the pickery?

A. This book won't show, because I never handled the cotton. Upon the surrender of the bill of lading to the railroad it was sent direct from the railroad—

Q. Then you do not know anything about it?

A. No, sir.

Objection.

Mr. Monroe:

I object to any testimony from this witness, he having said he did not know anything about this cotton and

50 never handled it himself.

A. You asked me when the cotton was sent to the pickery.

Q. Did you send it?

A. Yes, sir, but I do not know what day it was. The bills of lading were surrendered to the railroad company and the cotton was sent direct from the railroad to the pickery, to be split. So, therefore, I have no record here of what date the cotton was sent into the pickery.

Q. Do you know what—

Mr. Merrick:

Let me go on and get through with him, and then I will turn him over to you.

By Mr. Merrick:

Q. The cotton you say then went into the pickery from the railroad?

A. Direct to the pickery.

Q. I show you this pledge of certain collateral marked O I C O and N O G N. Let us take O I C O first. It was covered by a Planters' Press receipt No. 1941. Had that cotton come back from the pickery before that press receipt was given?

A. No, sir, the cotton had to be in the Planters' Press before a receipt could be issued on it.

Q. Then this cotton must have come back from the pickery into the press?

Objection.

Mr. Monroe:

I object to this whole line as hearsay opinion of the witness.

Q. I show you Planters' Press receipt No. 1942, I show you that. We hold a Planters' Press receipt No. 1942 for the Commercial National Bank, which Planters'
51 Press receipt was delivered to the Commercial National Bank on December 17, 1912. It is for 60 bales of cotton marked N O G M. Will you tell me whether that cotton was sent to the pickery after press receipt had been issued, or not?

A. No, sir.

Q. Now, how do you know this cotton has to be in the press before press receipts are issued?

A. For the simple reason I have been in the business entirely too long not to know that a press is not going to issue a press receipt on cotton, if no cotton exists.

By Mr. Monroe:

Q. That is your opinion?

A. Yes, sir.

Objection.

Mr. Monroe:

I object to that and ask that it be stricken out.

By Mr. Merrick:

Q. You heard Mr. Moses' testimony in regard to the dates shown by your classer's book, did you not?

A. Yes, sir.

Q. Your classer's book does not purport to show any dates, does it?

Objection.

Mr. Monroe:

Objected to on the ground that the book is the best evidence.

Q. Can you tell me, by referring to your book, what became of Planters' Press receipt No. 1942, marked N O G N or N O G M, for 60 bales of cotton?

A. Well, that receipt evidently was surrendered.

52 By Mr. Monroe:

Q. You have no reference in that book for—

A. I have no reference in numbers of any receipts, but on page 302 it shows that the 60 bales of N O G N were shipped out on December 28th; so evidently the receipt had to be surrendered to the press in order to have that cotton shipped. It must have been surrendered to the press the same day.

Q. Look at your entries of December 20th and tell me what have you to say about 20 bales O I C O?

A. There were 60 bales sent to the steamship Virgil for Ghent, and 30 remaining bales stayed in the press until December 28th, and were remarked into B J J D and ordered to the steamship Virginie for Havre, for account of Dreuil & Company.

Q. How was the N O G N or N O G M remarked?

A. 60 bales. B P I D, 30, were ordered to the steamship Virgil, for Havre, for account of Cornille & DeBlond, and F A K D, 30, per steamship Virginie, for account of Cornille & DeBlond.

J. H. FULTON, recalled, on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:

Q. I show you a document dated December 17th, which has already been testified to, being an agreement to substitute collateral. Will you tell me—on that substitution are 60 bales and a mark N O G M. Will you tell me when they
53 were withdrawn by Dreuil & Company, or if they were withdrawn, those 60 bales?

A. Yes, 60 bales were withdrawn by Dreuil & Company under a trust receipt, on December 28, 1912.

Q. Now, in the trust receipt, will you tell me what—first, will you tell me what the press receipt number was of the 60 bales marked N O G M, which were pledged to your bank?

A. Planters' Press receipt No. 1942 was pledged on December 17th, and the same press receipt was withdrawn on December 28th, under trust receipt.

Q. Will you explain then how it happens that trust receipt dated December 28th contains the word N O G N, and the other N O G M?

By Mr. Monroe:

Q. Did you personally handle those documents at the time or were they handled by somebody else?

A. I am taking this from the records of the bank.

Q. I say, you are simply testifying to what appears on

the face of the documents, you have no personal knowledge of it?

A. None whatever, except the records of the bank, because I have looked into this very carefully from our own records, and the same 60 bales that are pledged are the same 60 bales that are taken out there. The lettering there looks like N, it may be taken for M.

Q. It is only identified by its mark?

A. It is the same press receipt.

Q. I ask you, by looking at the trust receipt, will you swear that it is not N O G M or N O G N?

A. No, I cannot swear—

54 Q. You cannot tell exactly which it is?

A. No, sir.

Examination of R. J. BOSWORTH continued.

By Mr. Monroe:

Q. Do you know on what day the cotton marked N O G N or N O Q M or N O G M went to the pickery?

A. I do not know what date it went in there.

Q. Do you know on what date the cotton marked O I C O went to the pickery?

A. I do not know the date.

Q. The entries that you made in your books are correct entries so far as you know, are they not?

A. Except that date December 20th—that N O G N which you think comes under that page of December 20th. There is no date at all on the top of that mark.

A. [Q.] No, but you have a page, 296, at the top of which you have the entry December 20, 1912, across the top of the page?

A. Yes, sir.

Q. And down below that you have certain entries?

A. But down below does not show the cotton that was handled on the date of December 20th.

Q. It shows those entries were made in there on that date?

A. No, it does not, because there is no date on it. You see the date of December 20th finishes right here.

Q. You have a page, 296, and at the top of that page are written the words December 20, 1912?

A. Yes, sir.

55 Q. On the next page, 297, are the words December 21, 1912?

A. Yes, sir.

Q. On the page before, which is page 295, are the words December 19, 1912, are they not?

A. Yes, sir.

Q. And on page 294, at the top of the page, is December 18, 1912?

A. Yes, sir.

Q. And on page 298 is December 21, 1912, and on page 299 is December 24, 1912. Now, why did you make the entry of the date at the top of those various pages?

A. They show the date these cottons were handled on.

Q. That is, the cotton which you recorded on the pages below that date?

A. Not exactly on the whole page, but simply it stops right here (pointing to the letters R. J. B.).

Q. Now, on page 296, at the head of which you have the words December 20, 1912, there occurs the entry in regard to the N O G N being transformed at the pickery from 40 into 60 bales, does it not?

A. But that does not show the pickery sent that cotton in the press. That cotton may have been in the press three or four or five days previous to when this entry was made.

Q. Didn't you make your entries so as to show everything that was done from day to day?

A. Not until I handled the cotton. You see, I never handled this cotton until such time that it was shipped out. Over here, December 28th, that is when I handled it.

Q. You never handled it at all?

A. Yes, sir, here I handled it after it was split by the pickery.

Q. You cannot tell when the cotton was split by the pickery at all?

56 A. I do not know what date it was sent into the pickery.

Q. You know that report was made to you that it was split by the pickery on that date?

A. No, I got no report.

Q. How did you get the information to make the entry you made on December 20, 1912?

A. I saw the press receipt in the office for the cotton.

Q. That was the first time you saw it?

A. Yes, sir.

Q. On December 20th?

A. Yes, sir.

Q. As the press receipts came in they were handed over to you?

A. No, I saw them on the cashier's desk. That is the time I knew the cotton was in the press.

Q. You made the entries in your book, classer's book No. 6, you made that every day, daily?

A. This was only made as a matter of record to show that in place of 40 bales this here represented 60 bales.

Q. Now, take the entry up at the top, O I C O. That is at the very head of your page, under December 20th, is it not?

A. I handled this particular mark here and it was shipped out on December 20th to the steamship Virgil, for Ghent.

Q. Then the entry O I C O is a correct entry?

A. Yes, sir.

Q. And the date correctly entered on that?

A. O I C O; yes, sir.

Q. Tell me something about this pickery business. What do you call the cotton that is picked up for your account at the various railroads in the city, picked up for account of Dreuil & Company, pickings, or something of that sort?

A. What do you mean?

57 Q. Every month, or every little while, every cotton firm gets some sort of a report from the railroads, does it not?

A. Yes, sir, I understand what you mean. That is cotton as handled—for instance, if you have cotton samples from a railroad, that is loose, which is considered loose from the bales, the Cotton Exchange appoints supervisors, that is, at the various railroads, to protect the shippers.

Q. What becomes of the cotton that is picked up?

A. It goes to the pickery, and the firms that are represented by the Cotton Exchange are credited with it by the pickery.

Q. Then the pickery takes that cotton and bales it up into bales?

A. The pickery buys its outright. I do not know what it does with it after it gives checks to the various firms.

Q. If the pickery had no cotton for account of Dreuil & Company, and you sent them some bales of cotton in there, would not they bale up any pickings which they had from the railroads?

A. Absolutely not; certainly not.

Q. Would they take 60 bales and take that very identical cotton and make it into 90 bales?

A. They will make it into 90 bales, for the simple reason that they will take two bales and make three out of it.

Q. Is that a regular customary thing among you cotton people?

A. It is the custom. I can cite a good many examples of that. In fact it is the practice of every firm in town, for the simple reason if you are selling cotton, say at 12 cents, and in the meantime the market goes up say $5.00 or $7.00 or $10.00 a bale, the cotton may be running 600
58 or 650 pounds, on an average, and in order to cut down the weight to make it 500 or 480 pounds, which is agreed as a merchantable bale, so many bales are taken and split to bring down that weight. We had an example last year with our own firm. We had sold cotton at 13 cents, and we shipped the cotton on an average of 600 pounds, and the market broke in the meantime, I think it was $7.00 or $10.00 a bale. We figured that we were ten thousand pounds over what they were entitled to, and the people on the other side billed us back for the difference of the surplus cotton at the market price of what we sold it at. You see, it is as fair on one side as the other.

Q. As I understood you, the only thing you knew about this N O G N was that you saw the press receipt on the cotton clerk's desk for 60 bales of cotton; is that correct?

A. Yes, sir.

Q. How did you get your information as to where that came from?

A. Because I knew I sent it into the press.

Q. You had sent it in, this particular cotton?

A. There is a history to the mistake of that mark. This here mark never should have been N O G N, but N O Q M, which happens very often.

Q. Tell me the whole history, because—

A. This cotton was originally sent from the railroad, after the surrender of the bill of lading. It was sent to the pickery under the mark N O Q M, 40 bales, and after the pickery—

Q. When was that done?

A. I told you I did not know what date it was. Whenever they surrendered, the bank surrendered the bill of
59 lading.

Q. That is your guess, but you do not know the date?

A. I know it to be a positive fact that I had a bill of lading for the 40 bales N O Q M in my hands. I sent the bill of lading up to the railroad and surrendered it, getting the release of 40 bales N O Q M, which was sent to the pickery under the mark N O Q M; and after the pickery split the 40 bales N O Q M into the 60 bales N O Q M, the 60 bales were sent into the Planters' Press N O Q M, and in turn the 60 bales N O Q M were afterwards marked into B P I D, 30, and F A K D, 30. N O Q M or N O G N never existed until after the lot of 100 bales that were shipped by the Virgil, and that is where the mark N O G M becomes confused with N O Q M.

Q. And then you had N O G N, 100 bales, which on December 20, 1912, you sent on the steamship Virgil to Ghent?

A. Yes, sir.

Q. When was this entry under the letters R. J. B. made in your book, at page 296?

A. There is no telling when they were made. They may have been made on the 24th. I turned back and found this space and just simply put it in there. It only served as a record to show instead of 40 bales in the press there were 60 bales.

Q. Have you got any other cotton marked N O G N except the cotton which appears as going to Ghent, on page 296, and the cotton which appears under R. J. B., page 296?

A. You have asked me if there was any cotton besides this?

Q. Yes.

A. No other.

Q. Have you got any other cotton marked B J J D, anywhere else?

A. No, sir; only this 30 bales that were taken from O I C O and re-marked into B J J D.

60 Q. Have you got any other cotton marked F A K D?

A. No other, except the 30 bales out of N O G N or N O Q M.

Q. What about B P I D?

A. 30 bales is all they had out of N O G N and N O Q M.

Q. Did you see those marks before, B P I D and F A K D?

A. No, I just started these marks for shipment upon that date of December 28th, when they stopped.

Q. Were you splitting any other cotton in that pickery besides these two lots, at that time—what other cotton did you split?

A. A A; Z Z; F F and K I.

Q. So that you sent into the pickery, as appears by these entries of December 20, 1912, 40 bales marked N O G N, 50 bales marked Z Z, 46 bales, marked F F, 60 bales marked A A, 40 bales marked K I; and you got out 60 bales marked N O G N, 75 bales marked Z Z, 69 bales marked F F, 90 bales marked A A, and 72 bales marked K I. Now, were you at the pickery at any time?

A. No, it was not necessary for me to be there.

Q. Then you do not know of your own knowledge, not what somebody else told you, whether the 60 bales that came out of the pickery marked N O G N are the same as the 40 bales that went in there marked N O G N, of your own knowledge?

A. Evidently this was not sent on the same day.

Q. If you do not know what date they were sent in, how do you know what date they were sent out?

A. Just a minute, I will show you. A A was sent in, 30 bales, on December 16th.

Q. You get that information because in your book you see under December 16th, A A?

A. I am going to show you. The 30 bales—

Q. That is where you got the date, in your book
61 under the date of December 16th, is it not?

A. Now, really I do not know whether the N O G N was in the pickery at the same time those four marks were.

Q. Therefore, you do not know whether the present N O G N was made up from the former N O G N, or part of the N O G N, or part of the Z Z, or part of F F, because

you were not in the pickery to see them making up those bales?

A. I know it to be a fact that people don't do that kind of a thing.

Q. You think they don't, but you do not know that, because you never saw them do it?

A. I not only think that, but I handled the cotton. I know the difference between the character of the cotton enough to know they do not mix them, for the simple reason these four letter marks are Texas cotton, the small numbers were Shreveport cotton, and this cotton is Texas cotton, and the character of the cotton is entirely different and they won't mix.

Q. Did you inspect the cotton after it came out of the pickery to find out whether it was the same kind of cotton or not?

A. Sure.

Q. When?

A. When I put it under these marks here, on December 28th, AA 19, Z Z 54, D D and F F.

Q. All that cotton came out of the pickery on the same day?

A. Well, now, I could not very well tell you that.

Q. I mean, according to your books it came out of the pickery on December 27th and 28th?

A. It may have come out of the pickery on December 26th or December 25th.

Q. Did you have any other Texas cotton in the
62 pickery on December 20th?

A. Only N O G N and O I C O, only those two marks.

Q. They had them both in there at the same time?

A. It all depends whether the bills of lading were taken out of the bank on the same day.

Q. Then they may have taken the cotton out of O I C O and put it into N O G N. How do they go about that?

A. They would not mix cotton up in the pickery, because I know that Mr. Sporl is entirely too honest to do anything detrimental to anybody's business.

Q. Other than splitting bales of cotton?

A. That is a perfectly legitimate business, for practically everybody in town does it.

By Mr. Mooney:

Q. Have you recently examined the 60 bales of cotton which are presently marked F A K D and B P I D, for the purpose of tracing the original marks, if possible?

A. Yes, sir.

Q. Did you make a report of your investigation?

A. Yes, sir.

Q. Is this the report which you prepared of that (counsel hands witness a certain report)?

A. Yes, sir.

Offer.

Mr. Monroe:

I offer the classer's book in evidence, particularly page 296.

Q. Is that a correct statement of your findings, from an examination of the physical bales as they exist to-day?

A. Yes, sir.

Q. Can you identify all that cotton now bearing those two marks F A K D and B P I D, as having been originally marked N O Q M?

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A. Yes, sir, I have the individual identification alongside of each tag number.

Q. And you are prepared to swear now, positively, that the 60 bales in the Planters' Press at this time, under the marks B P I D and F A K D, are the 60 bales which were originally marked N O Q M?

A. Yes, sir.

Q. Now, in that statement which you have prepared you give the reasons of the method by which you identified that cotton. Is that correct?

A. Yes, sir, by the individual bales.

Q. Either by the original mark which is already upon it, or by the original Texas tag?

A. Some of the bales have them and some have not.

Q. And you are positive that that is a correct statement of the identification of that cotton?

A. Yes, sir.

By Mr. Merrick:

Q. You do not pretend that this cotton jumped from the mark N O Q M to F A K D, do you?

A. I do not know, sir.

Q. You have not given here the tracing, as to how this cotton went through, what other names it had on it?

A. There were no other marks on it outside of the marks F A K D and B P I D.

Q. Do you mean to say that F A K D and B P I D were never under N O G N or N O G M, or any other name except N O Q M?

A. No, sir, because when that cotton was sent from the pickery it was marked N O Q M.

Q. Who asked you to do this?

A. The Canal-Louisiana Bank.

64 Q. What particular person asked you to do it?

A. Through the attorneys, I think.

Q. I want to ask you something else. You have traced this cotton up as marked N O Q M. The Commercial National Bank has a receipt, or had in its possession a receipt of cotton marked N O G N or N O G M, up to December 28th, when it was withdrawn on trust receipt by Dreuil & Company. Are you prepared to say that this is not that cotton?

A. As far as the trust receipts, or any dealings with the banks, I had absolutely nothing at all to do with. As far as my connection with the firm was concerned, my business applied to the classing of the cotton and to making dispositions of all their shipments.

Q. Will you look at your book and tell me what became of the cotton which was withdrawn on trust receipt and marked N O G N, on December 28th, I mean, was withdrawn on trust receipt, December 28th, marked Planters' Press receipt No. 1942, 60 bales N O G N or N O G M?

A. N O G N is wrong; it is a mistake in making the N. It ought to be N O Q M.

Q. That is the identical cotton that was pledged to the Commercial National Bank, as shown by your books?

A. Well, now, unless there was another receipt N O G N out on the cotton, which I do not think there was.

Q. Where is that cotton covered by Planters' Press receipt No. 1942?

A. I do not know anything about that.

Q. Here is your receipt. You got it on December 28th, 60 bales N O G N or N O G M. Now, will you see what you did on the 20th of December, don't your books show what you did with that cotton, that particular cotton?

65 A. 60 bales are here, which is evidently that particular cotton.

Q. That is in question, that is covered by this receipt. Now, what were the marks on that cotton?

A. You mean what were the original marks?

Q. No, the present marks.

A. B P I D, 30, F A K D, 30.

Q. That is the identical cotton which you have identified here, is it not, as coming from N O Q M?

A. I presume so. It is the only 60 bales that we have in the press by those two marks.

Q. And it was the only 60 bales withdrawn on December 28th?

A. I know nothing about any dealing, as far as the banks are concerned.

Q. How many bales of cotton are covered by this document of yours?

A. 60 bales.

Q. You say then that the B P I D and F A K D are the same cotton which was marked N O G N or N O G M, that the N and M are practically the same as N O Q M?

A. Yes, sir.

By Mr. Mooney:

Q. This document which you have before you covers the cotton under its original mark, N O Q M, and under its present marks F A K D and B P I D. Whether or not it was ever known as N O G N or N O G M is a matter of speculation with you, is it not?

A. It is an error on my part that this entry was made as N O G N; it should be N O Q M.

Q. In the books?

A. Yes, sir.

Q. But there is no doubt but what the cotton now marked F A K D and B P I D was to represent N O Q M?

66 A. It was from the original N O Q M.

Offer.

Mr. Mooney:

I want to offer the document identified by the witness and mark it Bosworth-1.

Q. You are the Mr. Bosworth who has been employed by nearly all of the banks in regard to identifying the cotton, are you not?

A. Yes, sir.

Q. You testified in the referee's court on all the rules in behalf of all the banks, did you not?

A. Yes, sir.

Q. You have no particular interest in this particular matter?

A. No, sir.

Q. You are merely giving the known results of your investigation?

A. Yes, sir.

Q. You were employed by the various banks at that time to identify cotton, were you not?

A. Yes, sir.

Q. And you were employed by us in this particular instance to identify cotton?

A. In the same capacity.

Q. There is no difference between the character of your employment in this instance and the character of your employment in the other cases?

A. No, sir.

By Mr. Merrick:

Q. You testified that what you said of the marking of this cotton N O G N or N O G M was an error on your part. Will you explain how that came about in using the Planters' Press receipt No. 1942, how the error arose?

67 A. If the Planters' Press made an error in seeing the press receipt, the same as I did, certainly it was no business of mine to change it, for the cotton was plainly marked N O Q M. Now, possibly, when one of the boys probably telephoned to the press people for that press receipt, they may possibly have said N O G N, being confused on the date that these 100 bales of N O G N were shipped to the Virgil, for Ghent.

Q. But, as a matter of fact, N O G N was the number you put down there in your book?

A. Yes, sir.

Q. And it covered this 60 bales of cotton that was received from the Commercial National Bank?

A. I do not know anything about what bank it came from.

Q. It was withdrawn from a bank on December 28th?

A. Evidently it was withdrawn from a bank.

Q. On December 28th?

A. I do not know what date. It was withdrawn on the date of the receipt which you show me there.

Q. Your first entry was under date of December 28th?

A. With reference to what?

Q. In reference to the press receipt?

A. Yes, sir.

Q. And this particular mark, N O G N, or N O Q M, 60 bales?

A. Yes, sir.

Q. But there is no N O Q M on your books?

A. No, but it ought to be.

Q. You say it ought to be N O Q M because the original marks were N O Q M at one time?

A. The original marks always remained N O Q M.

Q. But N O G N was meant for N O Q M evi-
68 dently when it was withdrawn?

A. When it was being transformed from mark to mark in the press.

By Mr. Monroe:

Q. Have you ever been up there in the pickery when they would make bales up?

A. Yes, sir, I have.

Q. What do they do—they open all the bales?

A. Yes, sir; take the ties off the bales.

Q. And take the cotton out and mingle it all together, and bale it up?

A. No. We never send a bale of cotton to the pickery unless it weighs over 550 pounds, anything like 550 pounds, or 700 pounds. We must strike our average then by taking two bales and making three out of them. Besides, if we have two bales possibly weighing 1300 pounds, we will get four bales out of them weighing approximately 440 pounds.

Q. That is, you break the straps, take the cotton out and make it up into parcels of 440 pounds each, and then bale it up again?

A. Yes, sir. They would open up two bales together, and they would take—say, if a bale weighed 600 pounds, they

would take 200 pounds off that bale; and if the other bale would weigh 650 pounds, they would take approximately 250 pounds off that one, and 240 pounds off the other bale, and then make three bales, which with the bagging on the extra bale would bring the approximate weight up to 440 pounds. But I would not ship 100 bales of cotton like that. For instance, if we have 40 bales of cotton averaging 400 pounds and we have 60 bales of cotton averaging 550 pounds, we make that average 480 pounds, because if we did not, they
69 would come back at us on the other side for the difference.

Q. When you put that 40 bales in there and took out 60 bales, there were 20 bales that certainly had new bagging, around them?

A. Evidently, yes.

Q. And there were 40 bales that might have had the old bagging and might not?

A. If they were using the same bagging. They don't always do that. There is no necessity to use the same bagging.

Q. No, I mean on the third bale?

A. You see, if there were two bales and you wanted to make three out of them, necessarily you would have to take extra bagging to put on the one extra bale.

Q. And if you take 100 bales of cotton, made up out of a 60-bale and 40-bale lot of cotton, and turn it into 150 bales of cotton made up of a 90 and 60 bale lot, you would have a difference of 50 bales with new bagging, there, would you not?

A. Yes, sir, because you are making—

Q. Then when you are making those 50 bales, you spoil some of the old bagging?

A. Not very much.

Q. They utilize it to the best of their advantage?

A. They utilize it to the best of their advantage.

Q. But they do not have to use any of the old bagging?

A. They are forced to use the old bagging. They only take the new bagging when they need it to complete the finishing of the bales.

By Mr. Mooney:

Q. This particular cotton, this lot of 40 bales, N O Q M, that were split into this 60 bales, according to your

70 testimony, was remarked N O Q M at that time, the whole 60 bales?

A. It was marked N O Q M, not remarked.

Q. For instance, as Mr. Monroe has just brought out, it would be 20 bales that had no mark, that had new bagging?

A. Yes, sir.

Objection.

Mr. Merrick:

I object to that question as leading.

Q. This lot, that is, the 40 bales with the original bagging on them, and, say, the 20 bales with the new bagging on them, how were they marked?

A. N O Q M, instead of N O G M.

Q. And it is according to your testimony, and from your investigation the other day, that it never had borne any other mark than N O Q M, and the present mark of F A K D on one lot and B P I D on the other; is that correct?

A. Yes, sir.

71 TESTIMONY ON BEHALF OF COMMERCIAL NATIONAL BANK ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Filed May 1st, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of

Dreuil & Company, Bankrupts.

No. ....

Testimony taken in the above numbered and entitled cause on behalf of the Commercial National Bank, in the matter of the rule for injunction pendente lite, before Henry J. Carter, Esq., United States Commissioner, as Special Examiner herein, on the 24th day of March, 1913.

Appearances:
Mr. E. T. Merrick, for Commercial National Bank.
J. Blanc Monroe, for Trustee.
Mr. Henry Mooney, for Canal-Louisiana Bank & Trust Co.

72 New Orleans, Louisiana, March 24, 1913.

H. C. SCHNEIDER, witness sworn and examined on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:
Q. Mr. Schneider, you are in charge of the New Planters' Press?
A. Yes, sir.
Q. How long have you been in charge of that press?
A. About twelve years.
Q. Do you remember a Planters' Press receipt, No. 1942?
A. Yes, sir.
Q. What did that call for—how many bales of cotton?
A. Sixty bales.
Q. How were they marked?

Objection.

Mr. Monroe:
I object on the ground that the receipt is the best evidence.

By Mr. Merrick:
Q. Is this the receipt to which you refer?
A. Yes, sir.

Offer.

Mr. Merrick:
I offer in evidence the receipt, which reads as follows: Made on the usual form of the Planters' Press, and bears the number 1942. Dated December 17, 1912. Signed by H. C. Schneider, Yard Clerk, and S. W. Lichtenstein, Secretary. Marked "60—N.O.G.M." Indorsed by Dreuil & Company.
Q. To what cotton did that receipt refer?

73 Objection.

Mr. Mooney:

We object to any attempt to vary or alter the written instrument by parol evidence.

A. That cotton represents the mark of N.O.Q.M. After the reinspection, why we found it was N.O.Q.M. on the tags.

Q. Is any of the cotton for which this receipt was given on hand in the Planters' Press now?

A. Yes, sir. It stands in another mark—sixty bales, in two other marks.

Q. What are these two other marks?

A. F.A.K.D. and B.P.I.D.

Q. How many of F.A.K.D. and how many of B.P.I.D.?

A. Thirty of each.

Q. Was there any other warehouse receipt issued by you at the time this was outstanding, against that cotton?

A. N.O.Q.M.?

Q. Against this cotton which you have stated there?

A. No, sir, there was only one sixty bales.

Q. You had no other warehouse receipt representing that cotton. Is that this receipt?

A. Yes, sir.

Q. And this calls for that particular cotton?

Objection.

Mr. Mooney:

We renew our objection, on the ground that the document speaks for itself.

Q. At the time this warehouse receipt was issued, there was no other warehouse receipt outstanding against this particular cotton of which you are testifying?

A. No, sir.

Q. Had this warehouse receipt been presented before the marks on the bales were changed, you would have delivered this cotton?

A. I did deliver that cotton, sir.

74 Q. You did deliver that cotton? To whom?

A. To Bosworth.

Q. And it was carried to him?

A. No, he remarked it and I shipped part of it, and then finally the failure came, and we didn't ship the balance.

Q. By Bosworth, you mean Dreuil & Company?

A. Yes, sir.

Q. And that cotton is still on hand in the press?

A. Yes, sir, under these new marks.

Q. Under the new marks, the receipts are delivered to the trustee, are they not?

A. Yes, sir.

Q. What are the numbers of those receipts?

A. 2098, 2108, 2106 and 2102.

By Mr. Mooney:

Q. Mr. Schneider, that receipt appears to be cancelled. That is, the signatures are erased by means of red lines passed through them, and also the indorsement. That is correct, isn't it?

A. Yes, sir.

Q. And that receipt is without any effect, except as part of your records?

A. It is part of my records, yes, sir—it goes down to the office, to Lichtenstein, and he cancels it.

Q. And this is a cancelled receipt, isn't it?

A. Yes, sir.

Q. When was that receipt cancelled?

A. Cancelled on December 28.

Q. And the only value it had after December 28th was as a memorandum, or part of your record?

A. Yes, sir, just what I stated above—

Q. The cotton that you have testified about is
75 marked N.O.Q.M., or was marked N.O.Q.M., was it not?

A. Well, yes, sir—N.O.Q.M. Of course, after they remarked it they rubbed that mark out, but on close inspection you could find it was a Q., and on the tags of the bales that had tags on them it was N.O.Q.M.

Q. Did you at any time have any cotton in the press marked N.O.G.M., for Dreuil & Company?

A. They had some cotton previous to that, but they remarked it from another mark, I think O.I.C.O—marked it into N.O.G.N., 40 bales, and shipped it. That was about the 17th of December, between the 17th and 20th.

Q. The particular 60 bales of cotton which you have on hand, and which originally bore the mark N.O.Q.M.—did that ever bear the mark N.O.G.M.?

A. No, sir.

Q. Or N.O.G.N.?

A. No, sir. N.O.G.M., I made out the receipt, but the ink is marked on the bales by the pickery, and the mark comes in that way, over the Q., but on a close inspection by Mr. Bosworth he found that on the bales that had country tags on them, the tags was N.O.Q.M., and also the mark on the bales, that you could make out through the ink was a Q.

Q. Were you present when Mr. Bosworth made that examination of those bales of cotton?

A. My assistant was.

Q. Has that cotton ever borne any other mark than the N.O.Q.M. and the F.A.K.D. and B.P.I.D., which two latter marks are, I believe, the present marks on the cotton marked from N.O.Q.M.? My question is, has it ever borne any other mark?

A. You can't see any other mark on it; no, sir.

By Mr. Monroe:

Q. Mr. Schneider, this warehouse receipt for 60 bales of cotton, marked N.O.G.M., was cancelled on December 28, 1912, was it not?

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A. Yes, sir.

Q. Was that cotton, N.O.G.M., taken out of that press at any time before December 28, 1912?

A. No, sir.

Q. On December 28, 1912, was it taken out?

A. I don't know about the exact date it was taken out, but it was remarked about that date.

Q. When was it taken out of the press?

A. Under the new marks, the F.A.K.D. and B.P.I.D., part of it was shipped and part of it remained in the press. It was all ordered to be shipped, you understand, and they stopped some at the ship.

Q. You know that you had, at one time, viz., December 16, 1912, 60 bales of cotton which, at that time, you thought were marked N.O.G.M., so you gave a warehouse receipt in the mark N.O.G.M., didn't you?

A. Yes, sir.

Q. Then, on December 28, 1912, that warehouse receipt for N.O.G.M. 60 bales was surrendered, and certain of that cotton was taken out of the press, wasn't it?

A. Yes, sir; it was cancelled out—yes, sir.

Q. How much of it was physically taken out of the press?

A. Under that mark?

Q. Yes.

A. Well, there was none taken out of the press, but it was remarked.

Q. Wasn't it all hauled to shipside?

A. Only part of both marks.

Q. What part of it was hauled to shipside?

A. 28 bales of one receipt, and 2 of another.

Q. How many bales out of this receipt 1942
77 were hauled to shipside?

A. I'd have to refer to the shipping book about that. I can find out by 'phone.

Q. As a matter of fact, were not these entire 60 bales hauled to shipside?

A. I don't think so.

Q. Didn't that entire 60 bales get hauled to the "Bethania?"

A. I was instructed to make out my receipts accordingly. The cotton that I hauled to a ship and the cotton that remained in the press after this failure, I made out the receipts for what was brought from the ship and what was remaining in the press—the 60 bales.

Q. Now, can you tell us how many bales of cotton out of the total number of bales which are now marked F.A.K.D. and B.P.I.D. were hauled to shipside?

A. I don't know exactly. I'd have to find that out, you know, from the order book.

Q. You know that some of them were hauled to shipside?

A. Yes, sir.

Q. Didn't follow them to shipside, did you?

A. No, sir.

Q. So that you don't know whether you got the same bales back that you sent out there or not, do you?

A. You can tell by the pickery bales.

Q. Now, Mr. Schneider, if you should send out 60 bales marked N.O.G.M. and get back 60 bales which you found, on

inspection, were marked N.O.Q.M., could your swear they were the same 60 bales?

A. Under that answer to you, I'd have to scrutinize every one of those pickery bales. They ain't got no numbers on them. Now, whether he had any in there with numbers on them, I don't know.

Q. How can you tell a pickery bale from any other bale?

78 A. In the pickery bales the heads are all sewed up, and there's no cotton to be seen at all. It's different from the other bales.

Q. Did you examine this cotton yourself, Mr. Schneider?

A. My assistant did. I was absent the day Bosworth came up there.

Q. So you can't swear that the cotton you have got there now is the same cotton represented by this receipt, from your own knowledge at all?

A. Yes—the majority of the cotton, you know—

By Mr. Merrick:

Q. Where is your assistant?

A. He is shipping cotton right now. I can get him to come down here, though.

Objection.

Mr. Monroe:

I object to this witness' evidence, on the ground that it is hearsay, according to his testimony.

By Mr. Merrick:

Q. Mr. Schneider, how did you come to issue a receipt in the name of cotton marked N.O.G.M., 60 bales, if that was not the proper mark?

A. N.O.Q.M. was listed from the list I got from the pickery, and in making out the list I just made an error in the letter.

Q. But that was the cotton?

A. Yes, sir.

By Mr. Mooney:

Q. Is that receipt in your handwriting?

A. Yes, sir.

Q. Where did you get the information from which the certificate is made out?

A. The certificate is made out at the press, and after we count the cotton, we issue the receipt.

Q. Had you examined the marks on the cotton
79 for which that receipt was given?

A. You mean when I received it?

By Mr. Merrick:

Q. When you issued this receipt. How did you know that cotton was on hand?

A. We get a list from the pickery, and then we count the cotton.

By Mr. Monroe:

Q. Who counted that cotton?

A. I counted it.

By Mr. Mooney:

Q. Was the mistake in the lettering your mistake, or were the letters given to you N.O.Q.M.?

A. It was a mistake in the lettering. Looking at the list that I got from the pickery you could make a Q out of it.

Objection.

Mr. Monroe:

I object that the best evidence is the list that he got from the pickery.

By Mr. Monroe:

Q. Mr. Schneider, if you have not looked up the list that came from the pickery and checked it to find out that the letters N.O.G.M. were in error, how do you know that pickery list contains the letters N.O.Q.M., and not N.O.G.M.?

A. From what I can remember of it. And after my assistant called my attention to it and Bosworth went over it, we found that it was N.O.Q.M. on the tags.

Q. Have you hunted up the list before you came down here, and checked it against the marks on the receipt of December 17?

A. No, sir. That receipt is cancelled. I just
80 cancelled it out, you know.

Q. You must have done some checking, Mr. Schneider, before you came down. What checking did you do?

A. Just checked it against my book. The 60 bales stands for N.O.Q.M. After Bosworth reported about it, I sent the assistant, and he said it was N.O.Q.M.

Q. All you know about it is what Bosworth told you?

A. My assistant made a check. It is what they call "out and back" cotton. He wanted to reinspect the cotton in my absence. And then we restored the cotton.

By Mr. Mooney:

Q. As I understand it, you say: "We examined this cotton." Did you personally examine the 60 bales of cotton before making that receipt, or did you make up the receipt from some other record?

A. I made it up from the list.

Q. And that is the list which you say came from the pickery?

A. Yes, sir.

Q. Which you have not consulted since the receipt was made?

A. No, sir; I haven't hunted that list up at all.

By Mr. Merrick:

Q. Mr. Schneider, you say you counted that cotton yourself?

A. The way the cotton is handled by the press, you have cotton hauled for different places at one time, and the gang handles it and piles it, and when the gang reports they are all right, you go to the pile and count the cotton before you issue the receipt. And whoever drays the cotton in, you issue a receipt for it. I have to give a receipt for that just the same as giving a press receipt.

Q. You counted it with the gang?

A. Yes, sir.

81 Q. Now, when you come back, will you get me that pickery list, and also have your assistant down here?

A. Yes, sir.

By Mr. Fulton:

Q. How long will it take him to come down here?

A. We will come down on the car, right away.

By Mr. Mooney:

Q. When you counted that cotton, as you say, in answer to Mr. Merrick's question, did you, or not, examine the marks personally?

A. You see, you can't examine the marks after cotton is piled. You have to turn the cotton out and inspect it.

Q. So that you didn't examine it?

A. No, sir.

By Mr. Merrick:

Q. Mr. Schneider, you counted that cotton before you issued the receipt for it?

A. Yes, sir.

By Mr. Mooney:

Q. The point is this, Mr. Schneider, you say that you counted the cotton, but you didn't examine the marks?

A. No, sir.

Q. So that you know there were 60 bales of cotton in a certain pile?

A. Yes, sir.

Q. So that whether it was N.O.Q.M. or N.O.G.M., you can't swear, can you?

A. Not until Bosworth reported to the assistant. And when Bosworth reported to the assistant, I seen plainly that it was N.O.Q.M.

82 By Mr. Monroe:

I move to strike out all of his testimony, on the ground that it is hearsay.

83 TESTIMONY ON BEHALF OF COMMERCIAL NATIONAL BANK ON APPLICATION FOR INJUNCTION PENDENTE LITE.

Filed May 1st, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of
Dreuil & Company, Bankrupts.
No. ....

Testimony taken in the above numbered and entitled cause on behalf of the Commercial National Bank, on the rule for injunction pendente lite, before Henry J. Carter, Esq., Special Examiner herein.

Appearances:
Mr. E. T. Merrick, for Commercial National Bank.
Messrs. Janvier & Mooney, for Canal-Louisiana Bank and Trust Co.
Mr. J. Blanc Monroe, for Trustee.

84 New Orleans, La., April 1, 1913.

EDWARD J. STAKELUM, witness, sworn and examined on behalf of the Commercial National Bank, testified as follows:

Direct Examination.

By Mr. Merrick:
Q. What is your name?
A. Edward J. Stakelum.
Q. What is your age?
A. Twenty-one years.
Q. What is your business?
A. Shipping clerk and assistant yard clerk for the Planters' Press.
Q. Sometimes called the New Planters' Press, but the usual name for it is the Planters' Press?

A. New Planters' Press.

Q. But it is generally called the Planters' Press?

A. Yes, sir.

Q. Did you receive any cotton in the Planters' Press marked N O Q M?

A. Yes, sir.

Q. What became of that cotton—where did you get it from?

A. I got it from Sporl's Pickery.

Q. When Sporl's Pickery sent the cotton, did they send a list with it?

A. Yes, sir.

Q. Did you examine the cotton and see that the number of bales were there, when it came in?

A. Yes, sir.

Q. The list which you received from Sporl's Pickery, how was it worded—I mean so far as the marks were concerned?

A. It was N O Q M, although it looked like G.
85 The Q had a slit in the letter and it looked as if it was a G.

Q. It could be easily mistaken for a G?

A. Yes, sir, it could; and it was.

Q. What became of the cotton, did you issue a warehouse receipt for that cotton?

A. Yes, sir.

Q. To whom did you issue that warehouse receipt?

A. To Dreuil & Company.

Q. What was the number of that warehouse receipt?

A. No. 1942.

Q. What became of the cotton afterwards, was it sent out of the press? I am speaking now of the N O G M cotton, or N O Q M, as marked on the pickery list?

A. On December 28th, it was marked into 30 bales B P I D and 30 bales F A K D.

Q. What became of it, do you know?

A. Yes, sir, B P I D, there were 12 bales sent to the ship.

Q. Do you remember the name of the ship?

A. The steamship Virginie.

Q. And of the other, what became of it?

A. The other 18 bales remained in the press on account of being notified by Dreuil & Company to hold the cotton.

Q. The rest of it was marked F A K D?

A. 28 bales of that was sent to the steamship Virginie; 2 bales remained in the press.

Q. Did that come back to the press?

A. Yes, sir; it came back to the press from the ship.

Q. Were new warehouse receipts issued for this cotton after it came back from the steamship Virginie?

A. Yes, sir.

Q. How many warehouse receipts marked F A K D were issued?

A. Two.

Q. What did they represent?

86 A. 2 bales F A K D, 28 bales F A K D.

Q. And how many B P I D?

A. Two; one for 12 bales B P I D and one for 18 bales B P I D.

Q. That cotton is on hand now?

A. Yes, sir.

Q. And that is the cotton which you say was called for by warehouse receipt No. 1942?

A. Yes, sir.

Q. If that warehouse receipt had been presented to you, as was presented to you, what cotton did it call for?

A. It called for N O Q M.

Objection.

Mr. Mooney:

Objected to on the ground that the document, of course, speaks for itself.

Q. You had no other cotton representing it than this particular cotton in your press?

A. No, sir.

Q. And this was cotton that was represented by this warehouse receipt about which you have testified?

A. Yes, sir.

Q. At the same time that you got this cotton from the Pickery you got another kind of cotton, another mark of cotton, did you not?

A. Yes, sir.

Q. What was the mark?

A. 90 bales O I C O.

Q. You do not know what brand that has been changed to now, do you?

A. 60 bales went into O I C O, on December 21st, and 30 bales went into the mark B J J D.

Q. You do not know now how that is represented, do you?

A. The mark B J J D?

87 Q. Yes.

A. The cotton that I looked at, I looked at about 5 bales. I did not look up the whole 30, because I could not see the whole 30 without turning out the cotton; but I looked at the first five or six bales in the pile and saw about three of them marked O I C O, which was about half way erased, but could be seen.

Q. Do you know what warehouse receipts were issued for those?

A. I do not.

Q. You do not know the numbers?

A. I do not know the numbers.

Q. Do you know that those 30 bales are on hand?

A. Yes, sir.

Q. And called for by receipts which have been issued to Dreuil & Company?

A. Yes, sir.

Q. Without knowing the numbers of the receipts?

A. Yes, sir.

Q. Do you know how many receipts there were? If you do not know of your own knowledge, don't say so.

A. I could not say exactly.

Offer.

Mr. Merrick:

In connection with the testimony of this witness I offer in evidence original pickery list produced by him.

Q. This is the original pickery list which you received at the time?

A. Yes, sir.

Q. And those marks on there are the marks that you went by when you made out the receipt?

A. The receipt.

88 Objection.

Mr. Monroe:

I object to the list as irrelevant and immaterial, and as an unsworn statement of a person not sworn as a witness.

Cross-Examination.

By Mr. Mooney:

Q. Do you know whether or not there was in the Planters' Press between December 17, 1912, and December 28th, any cotton marked N O G N?

A. I could not say that exactly, I would have to look that up.

Q. If you do not know whether or not there was any cotton marked N O G M in the press during that time, how can you say that you would have delivered N O Q M cotton on a press receipt calling for N O G M?

A. Because they go by the number of the receipt, and being of the same date, we place that number alongside of the cotton issued, and by the posting of the cotton in the press it would be the same cotton.

Q. Each lot is posted?

A. Yes, sir.

Q. And the number of the receipt is put on the post?

A. No, sir; the number of the receipt is put in the book.

Q. Suppose you had a certain number of bales of N O G M and a certain number of bales of N O Q M, the same number, in different lots, in the yard, and you were presented with a receipt calling for N O G M, which lot of cotton would you deliver on that receipt?

A. I would deliver the N O G M cotton, if the receipt called for that; but if the receipt number corresponded with the N O Q M, I would deliver the N O Q M.

89. Q. What is the means of identification, then, the receipt number, or the mark on the bale?

A. The mark on the bales.

Q. Then why is it you would deliver N O Q M cotton on an N O G M receipt, if you had an equal number of N O G M cotton in the yard at the time?

A. Because it would call for the same date of the N O Q M cotton.

Q. How do you identify the cotton, by the date of the receipt, or the number of the receipt, or the mark on the bales?

A. We go by the mark on the bale, and the date.

Q. Now, suppose there were two receipts of the same date, one for N O G M and one for N O Q M—

Objection.

Mr. Morrick:

I object to that, because there is nothing to show that any two receipts correspond. It is merely a suppositious question.

Q. —and you had cotton of both marks in the yard, and the N O G N receipt was presented, what cotton would you deliver on it?

A. I would deliver the cotton according to the receipt number, and then look up the list.

Q. Did you examine the cotton that is in the yard now?

A. Yes, sir.

Q. The cotton that is marked B P I D?

A. Yes, sir.

Q. And F A K D?

A. Yes, sir.

Q. How many bales of each mark were there there?

A. 30 bales B P I D.

Q. How many F A K D?

90 A. 30 bales.

Q. What marks does that cotton bear?

A. The original marks are on it, N O Q M, on some bales. Of course, some bales you cannot make out all the mark on it, you can make out one letter, maybe the beginning of the letter N and other letters—M.

Q. Were you there when Mr. Bosworth made an examination of that cotton?

A. Yes, sir.

Q. Some of the original tags are still on the bales?

A. Yes, sir.

Q. And can be identified?

A. Yes, sir.

By Mr. Monroe:

Q. You said that 28 bales marked F A K D were sent to

the steamship Virginie. Suppose there had been 100 additional bales of cotton marked F A K D on the wharf at the steamship, could you have gone there and picked out the 28 bales marked F A K D which came from your press?

A. If it was headed up so I could not see the marks, I could not.

Q. But I mean, suppose there was other cotton of that same mark F A K D, could you have told which was the cotton which came from your press, and which came from other presses?

A. By seeing the original marks on it I could, N O Q M.

Q. I say if that had been on there?

A. Yes, sir.

Q. When you got back from the Virginie 28 bales of cotton, could you swear that that is the same 28 bales that went out of your press?

91 A. I could swear on most every bale. Of course, there is about one or two bales which you cannot make out the mark on altogether.

Q. Have you looked at the 28 bales, bale by bale?

A. Yes, sir.

Q. Now, of this cotton B P I D, how many bales did you send from the press to the Virginie?

A. 12 bales.

Q. And on that cotton that you got back, cotton marked B P I D, could you swear that it was identically the same cotton that you sent to the steamship Virginie?

A. Most of it, about 9 bales of it.

Q. And the rest you could not swear on?

A. You see, the cotton that came from the pickery had all new bagging on it, and it was a very nice package. It is the same identical cotton that I shipped.

Q. Was not there other cotton at the Virginie which had come from the pickery?

A. I do not know.

Q. Then you do not know whether there was other cotton at the Virginie marked B P I D?

A. No, sir.

Q. They make up—when they ship cotton they make up their lots in 100 bale lots, do they not, for each lot?

A. Sometimes they do.

Q. You don't usually ship cotton in 12 bale lots and 20 bale lots, do you?

A. Yes, sir, at different times. They get two bales from one press—they split it around the presses. We cannot tell—

Q. But when it comes to the wharf they make it up in 100 bale lots, don't they; don't they ship cotton in

92 100 bale lots?

A. I cannot say exactly, but generally they do that.

Q. But you do know they get cotton from around the presses to the wharf, which cotton has the same mark on it?

A. Yes, sir.

Q. Therefore you could not positively swear that the cotton that came back to the Planters' Press was the same cotton that went out, could you?

A. Not every bale.

Q. What about the cotton marked B J J D, do you know anything about that?

A. 30 bales.

Q. What happened to it?

A. It was shipped to the Virginie, too.

Q. Now, there are 100 bales of cotton which went out of your press during December, 1912. You do not know anything about that?

A. No, sir.

Q. You do not know where that came from or where it went to?

A. No, sir.

By Mr. Merrick:

Q. You testified that some of the cotton marked B P I D or F A K D may have been in new covers, or was in new covers as it come from the pickery; that it was well put up. Did the cotton which you got back from the ship differ in any way from the cotton which was shipped out, as far as you can remember?

A. No, sir.

By Mr. Mooney:

Q. I want a little explanation on this slip. This document which was offered by Mr. Merrick is a document

93 which you received from the pickery; is that correct?

A. Yes, sir.

Q. Do you know in whose handwriting that lighter colored ink writing is?

A. Edward J. Sporl.

Q. He is an employee at the Sporl's Pickery?

A. Yes, sir.

Q. Have you seen Mr. Sporl's writing often, are you familiar with it?

A. Yes, sir; and he has it signed to the bottom of the list.

Q. Would you know the handwriting, regardless of the signature? Are you sufficiently familiar with his handwriting to identify it?

A. Yes, sir.

By Mr. Merrick:

Q. Are you familiar with his signature?

A. I am familiar with his handwriting.

Objection.

Mr. Monroe:

It is understood that the same objection that was made to the document is made to the testimony relative to its contents, with the additional objection that the contents are the best evidence, if any of it is admissible.

By Mr. Mooney:

Q. From that writing can you tell the meaning of the "40 bales, excessive 20" appearing thereon?

A. No, sir.

Q. You do not know what that means?

A. No, sir; I only go by the 60 bales that we received.

Q. You understand—

94 By Mr. Merrick:

Q. He wants to know what the meaning is of excessive 20?

By Mr. Monroe:

Q. Here are 40 bales, and dotted under the words "made into 60 bales, and excessive 20."

A. Yes, sir; I know nothing of that.

Q. You do not know what that indicates?

A. No, sir.

Q. Now, in that darker ink the word "range" appears on this document in the lower left hand corner and in the upper right hand corner, and the letters A A and underneath that Z Z and F F and K I. Do you know whether that writing, those letters, have any special significance on that document?

A. No, sir.

Q. Of your own personal knowledge you do not know what that lettering means, or what significance it has on that document, do you?

A. Well, that list came in blank; when it came in it never had these letters on top here.

Q. You mean when you first received it?

A. Yes, sir; when we first received it, it had none of these small letters on it at all.

Q. Of your own knowledge do you know who put them on?

A. Mr. Schneider.

Q. You mean the letters in the darker ink?

A. Yes, sir.

Q. Did you see him put them on?

A. No, sir.

By Mr. Merrick:

Q. Do you know his handwriting?

A. Yes, sir.

95 Q. Do you know why they were put on there?

A. Because we received cotton by that mark, A A, Z Z, F F, and K I, and Mr. Schneider put down range over those marks so he would range it.

Q. So this memorandum has nothing to do with this case?

A. Nothing at all.

By Mr. Mooney:

Q. What became of this list that you received, to whom did you turn it over, if anyone?

A. We filed this list away.

Q. Do you know how it got into Mr. Schneider's hands?

A. I put it on the desk, on the pile where Mr. Schneider enters it into his other books and then draws the press receipt on it.

Q. You first received the document?

A. Yes, sir.

Q. Did you check the cotton covered by that?

A. Yes, sir; this cotton, because it was compressed.

Q. And then you put that document on Mr. Schneider's desk?

A. Yes, sir.

Q. And it is his duty there to make the press receipts, write out the press receipts?

A. Yes, sir.

Q. You have nothing to do with that?

A. No, sir.

96 Agreement:

It is agreed between the parties that the testimony reported in the latter part of page 53 of the testimony of W. H. Hendren can be copied into this record, as follows, beginning at page 52: Q. Have you any cotton for account of Cornille & DeBlond? Will you give us a complete list of that cotton, giving its marks, which you have on hand for Cornille & DeBlond? A. For Havre, 16 bales B E N D; 30 bales L D I A; 12 bales B P I D; 60 bales I S A D; 28 bales F A K D; 15 bales D I K P; and 12 bales L O G S. Bills of lading have not been issued for any of the foregoing cotton. Q. That is on board of the Virginie? A. That is on the wharf.

Mr. Merrick:

We rest.

97 TESTIMONY ON BEHALF OF CANAL-LOUISIANA BANK AND TRUST CO. ON APPLICATION OF COMMERCIAL NATIONAL BANK FOR INJUNCTION PENDENTE LITE.

Filed May 1st, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of:

Dreuil & Company, Bankrupts.

No. ——

Testimony taken in the above numbered and entitled cause on behalf of the Canal-Louisiana Bank & Trust Co., on the

rule of the Commercial National Bank for an injunction pendente lite against the trustee herein, before Henry J. Carter, Esq., examiner, on the 12th day of March, 1913.

Appearances:

Mr. Henry Mooney, Solicitor for the Canal-Louisiana Bank & Trust Co.

Mr. Edwin T. Merrick, for the Commercial National Bank.

Mr. J. Blanc Monroe, for Whitney Central National Bank.

98 New Orleans, La., March 12, 1913.

CHARLES JANVIER, witness, sworn and examined on behalf of the Canal-Louisiana Bank & Trust Company, testified as follows:

Direct Examination.

By Mr. Mooney:

Q. What is your name and occupation?

A. My name is Charles Janvier, and I am president of the Canal-Louisiana Bank & Trust Company?

Q. At the time Dreuil & Company were adjudicated bankrupts were they indebted to the Canal-Louisiana Bank & Trust Company?

A. They were.

Q. In what amount?

A. $176,000,00.

Q. What evidence of that debt did you have?

A. I have them in here, in my hand, notes aggregating $176,000.00.

Q. Those are the notes that were identified at the time of the hearing before Mr. Bell?

A. The same notes; I never lost any of them.

Q. And of which copies were filed, with the consent of the referee, at that time?

A. Yes, sir.

Q. Have you in your possession now original trust receipts or trust receipt dated December 13th?

A. Yes, sir.

Q. According to this document it appears that 40 bales of cotton marked N O Q M and 60 bales of cotton marked O I C O were withdrawn by Dreuil & Company on this trust receipt, on that date. That is correct?

A. Yes, sir.

Q. Has Dreuil & Company ever returned that cotton to the bank or accounted to the bank for the proceeds
99 of that cotton?

A. No, sir.

Q. If the bank recovers the cotton covered by this litigation, together with such other recoveries as might be affected on all the cotton in controversy, would that be sufficient to liquidate the debt to the bank?

A. I am sorry to say, not.

Offer.

Mr. Mooney:

I offer the originals of the notes and of the trust receipt of December 13th, and the note of December 7th, with leave to substitute the copies annexed to the referee's report, filed Jaunary 15, 1913, in the matter of the rule of the Canal-Louisiana Bank & Trust Company versus the Receivers.

Cross-Examination.

By Mr. Monroe:

Q. You bought the exchange on that N O Q M and O I C O apparently on December 21, 1912. After December 21st did the Canal Bank receive in payment from Dreuil & Company a sum, say $4,000.00, or over?

A. No, I have no positive knowledge on that point, right now, but I have a recollection that they paid some $6,000.00.

Q. After December 21st?

A. After December 21st. That is merely my recollection, Mr. Monroe.

By Mr. Mooney:

Q. That $6,000.00 was not paid to the bank on account of this particular note secured by the pledge of the
100 cotton, was it?

A. No. He would have withdrawn this, if he had.

By Mr. Monroe:

Q. It was not paid on account of anything?

A. No, sir.

Q. It was generally paid?

A. As far as I know, no, it was just paid.

By Mr. Mooney:

Q. Was that credited on the first note, the original note, that $6,000.00?

Objection.

Mr. Merrick:

Objected to as irrelevant and not the best evidence.

A. I cannot answer that question.

101 EXHIBIT OFFERED BY CANAL LA. BK. & TRUST CO.

Statement of R. J. Bosworth Ascertaining of the Original Marks on the Following Cotton in the Matter of Dreuil & Co. Bankruptcy.

Detailed Statement of 60 Bales of Cotton.

Identification Tags.	Original Marks.	Re-mark.
5760	NOQM	FAKD
	trace of mark on bale	
61	NOQM	FAKD
	trace of mark on bale	
62	NOQM	FAKD
	Texas tag NOQM No. 25	
63	NOQM	FAKD
	Texas tag NOQM No. 13	
64	NOQM	FAKD
	Texas tag NOQM No. 10	
65	NOQM	FAKD
	trace of mark on bale	
66	NOQM	FAKD
	trace of mark on bale	

Identification Tags.	Original Marks.	Re-marks.
5790	NOQM	BPID
	trace of mark on bale	
91	NOQM	BPID
	trace of mark on bale	
92	NOQM	BPID
	trace of mark on bale	
93	NOQM	BPID
	Texas tag NOQM No. 2	
94	NOQM	BPID
	trace of mark on bale	
95	NOQM	BPID
	trace of mark on bale	
96	NOQM	BPID
	trace of mark on bale	

67 NOQM FAKD
trace of mark on bale
68 NOQM FAKD
trace of mark on bale
69 NOQM FAKD
trace of mark on bale
70 NOQM FAKD
trace of mark on bale
71 NOQM FAKD
trace of mark on bale
72 NOQM FAKD
Texas tag NOQM No. 1
73 NOQM FAKD
Texas tag NOQM No. 40
74 NOQM FAKD
trace of mark on bale
75 NOQM FAKD
trace of mark on bale
76 NOQM FAKD
Texas tag NOQM No. 35
77 NOQM FAKD
Texas tag NOQM No. 14
78 NOQM FAKD
trace of mark on bale
79 NOQM FAKD
trace of mark on bale
80 NOQM FAKD
trace of mark on bale
81 NOQM FAKD
trace of mark on bale
82 NOQM FAKD
trace of mark on bale
83 NOQM FAKD
trace of mark on bale
84 NOQM FAKD
trace of mark on bale
85 NOQM FAKD
trace of mark on bale
86 NOQM FAKD
trace of mark on bale
87 NOQM FAKD
trace of mark on bale
97 NOQM BPID
trace of mark on bale
98 NOQM BPID
trace of mark on bale
99 NOQM BPID
trace of mark on bale
5800 NOQM BPID
Texas tag NOQM No. 37
01 NOQM BPID
Texas tag NOQM No. 38
02 NOQM BPID
trace of mark on bale
03 NOQM BPID
trace of mark on bale
04 NOQM BPID
trace of mark on bale
05 NOQM BPID
Texas tag NOQM No. 26
06 NOQM BPID
trace of mark on bale
07 NOQM BPID
trace of mark on bale
08 NOQM BPID
trace of mark on bale
09 NOQM BPID
trace of mark on bale
10 NOQM BPID
trace of mark on bale
11 NOQM BPID
trace of mark on bale
12 NOQM BPID
trace of mark on bale
49 NOQM BPID
trace of mark on bale
14 NOQM BPID
Texas tag NOQM No. 16
15 NOQM BPID
trace of mark on bale
16 NOQM BPID
trace of mark on bale
17 NOQM BPID
trace of mark on bale

88	NOQM FAKD Texas tag NOQM No. 33	18	NOQM BPID trace of mark on bale
89	NOQM FAKD Texas tag NOQM No. 18	19	NOQM BPID trace of mark on bale

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102 REPLICATION TO ANSWER.

Filed May 10, 1913.

U. S. District Court, East. Dist. of Louisiana.

Commercial National Bank
vs. No. 1765.
Canal-Louisiana Bank & Trust Co.

In Re:

Drieul & Company, Bankrupts.

Now comes the Commercial National Bank, plaintiff in the above numbered and entitled cause, and replying to the reconventional demand in this case, says:

That saving and reserving all manner of exceptions to the insufficiency of the said answer and reconventional demand, for replication thereto, doth say:

That its bill is true and sufficient as averred, and that it is ready to prove it, and that the answer of the defendant is untrue and insufficient.

Wherefore, plaintiff prays relief as set forth in its original bill.

(Signed) MERRICK, LEWIS, GENSLER & SCHWARZ, Solicitors.

103 REASONS OF THE COURT ON PETITION OF COMMERCIAL NATIONAL BANK AGAINST CANAL-LA. BANK & TRUST CO. AND TRUSTEE.

Filed May 17, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of:
Dreuil & Company, Bankrupts.
No. 1725. In Bankruptcy.

On the Petition of the Commercial National Bank and Counter Claim of the Canal Bank & Trust Company.

In this matter it appears that the bankrupts, Dreuil & Company, pledged to the Canal Bank & Trust Company a bill of lading for forty bales of cotton, marked N O Q M, and another for sixty bales of cotton, marked O I C O. A few days later they obtained the bills of lading from the bank on what are known in banking circles as trust receipts, of which the following, as to their material parts, is a copy:

"Received of Canal Bank & Trust Company the bills of lading or other documents or securities as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assigns, and to specifically apply against the very same advances the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts representing the undermentioned goods within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof or the documents therefor for account of the said bank."

Instead of complying with the terms of the trust receipts, they sent the cotton to a pickery, where the forty bales, marked N O Q M were remade into sixty bales, and sixty bales, marked

O I C O, were remade into ninety bales. They next stored the cotton in the Planters' Press, obtained two negotiable warehouse receipts for it and pledged them to the Commercial National Bank. Thereafter they obtained these two warehouse receipts from the Commercial National Bank on
104 similar trust receipts and, again failing to comply with their agreement, surrendered the warehouse receipts to the press, changed the mark of the bales of the N O Q M to B P I D and F A K D, thirty bales each, and changed the mark of the thirty bales of O I C O to B J J D. They then disposed of the sixty remade bales, still marked O I C O, but the balance of the cotton is still in the warehouse with no negotiable documents out against it. The bankrupts are indebted to each bank in an amount exceeding all the collateral held by it, including the cotton above referred to.

The trustee contends that the cotton on hand is not identified as the cotton originally pledged and hence forms part of the general estate. This position is not well taken. The proof is ample to identify the cotton, and the contention of the trustee may be dismissed from further consideration.

The Commercial National Bank contends that having received the negotiable warehouse receipts in pledge, for value, and without notice, under the uniform warehouse receipts act adopted in Louisiana, Act 221 of 1908, its title is superior to any other.

On this question it appears from the report of the commissioners on uniform state laws of January 1, 1910, that the uniform warehouse receipts act was first considered by them in national conference in 1904, and Professor Samuel Williston and Mr. Barry Mowhun were commissioned to draft such an act. The draft was prepared by the gentlemen named, and after due consideration and some changes it was approved by the commissioners in 1906 and recommended to the Legislatures of the several States for passage. The law has been adopted in over twenty States, but apparently no court of last resort has had occasion to construe the sections relied upon by the Commercial National Bank. At least, no cases are cited by counsel and I have not been able to find any.

It is apparent, however, that the purpose of the
105 law is to facilitate legitimate business and not to abrogate or change fundamental principles. Both at common law and under the Civil Code of Louisiana, Articles

2452 and 3142, a bailee or trespasser could not by selling or pledging the property convey a better title than he possessed himself, even to an innocent third person, and neither the intent nor the letter of the uniform statute will support the proposition that he could do so indirectly by storing the goods and negotiating the receipt. The sections of the law relied upon by the Commercial National Bank material to the issue are, as follows:

Section 40—

A negotiable receipt may be negotiated—

(a) By the owner thereof; or

(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

Section 41—

A person to whom a negotiable receipt has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value.

Section 47—

The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake, or duress."

The commissioners on uniform State laws, in their report of January 1, 1910, referring to Sections 40 and 41, had this to say:

"This section and the next are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes and there is authority for them in the statute making warehouse receipts and bills of lading negotiable and in well recognized mercantile custom. It will be noticed that one who takes by trespass or a finder is not included within the description of those who may negotiate."

Professor Williston, with reference to the uniform act, states the rule as follows:

106 "As a general proposition it needs no argument to show that a bailor having no title to goods cannot, by depositing them with the warehouseman, or carrier, and receiving a document of title in return, whatever its form, give a good title to a purchaser of the document, however innocent the purchaser may be." Williston on Sales, paragraph 421.

Moreover the uniform act is but a step in the development of the law, and decisions relating to prior and similar acts are safe guides to its construction. In Commercial Bank of Selma vs. Hurt, 99 Ala. 130, a case almost identical with the one at bar, the court, in upholding the title of the owner of the goods, in the course of its opinion took occasion to say:

"We cannot conceive that it could have been within the contemplation of the Legislature that the provisions of the statute would enable a thief, by depositing the stolen property with a warehouseman, and obtaining a receipt for it in due form, to confer upon an innocent purchaser for value and in good faith a claim to the property which would prevail against that of the true owner."

And it is doubtful that Act 221 of 1908 changed the law of Louisiana materially. Section 7 of Act 156 of 1888, in force up to that time, provided as follows:

"That the receipts issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferrable by indorsement in blank or by special indorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without

other formality, and the transferree or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage or other warehouse charges."

In Holton vs. Hubbard, 49 A. 715, a case arising under this act, the Supreme Court of Louisiana reviewed the statutes and the jurisprudence and held that when property was shipped to a factor for the purpose of sale only and was stored by him and the receipt pledged to secure the factor's debt, the owner was not precluded to claim the property; that Articles 2452 and 3142 of the Civil Code which strike with nullity the sale or pledge of the property of another were not repealed by the act; that if it could be held that the act intended to repeal these articles of the Code it would be open to the objection of unconstitutionality because no such purpose was stated
107 in its title. Mr. Justice Miller, in denying a rehearing, summed up the Court's conclusions as follows:

"With the most careful consideration, we are utterly unable to interpret legislative acts designed to assist legitimate commercial necessities so as to overthrow long-settled principles, and sanction what the law deems frauds."

See also Frantz vs. Wienhill, 124 La. 680.

The Canal Bank & Trust Company was constructively the owner of the cotton by virtue of its pledge and as holder of the bills of lading. When it surrendered the temporary custody of the bills of lading to the bankrupts they became its bailees, and their authority was restricted and governed by the trust receipt and did no [not] include the right to pledge the cotton.

R. S. of Louisiana, 2482.

Lallande vs. His Creditors, 42 A. 705.

Bank vs. Meyer, 43 A. 1.

Insurance Company vs. Kiger, 103 U. S. 352.

Shaw vs. Railroad Company, 101 U. S. 562.

The Commercial National Bank also invokes the doctrine that where one of two innocent parties must suffer, he who put it in the power of the wrongdoer to commit the wrong must bear the burden. This doctrine, of course, could have no application unless the Canal Bank & Trust Company was guilty of negligence.

It would be greatly inconvenient, if not impracticable, to conduct the cotton business unless cotton merchants were entrusted with the temporary possession of negotiable bills of lading and warehouse receipts, for the purpose of having the cotton sampled and classed and marked, weighed and shipped when sold. It is the well recognized custom in New Orleans to do so. Therefore, the Canal Bank & Trust Company was guilty of no negligence in surrendering the bills of lading on trust receipts, and the record does not disclose that they did or said anything else that could estop them.

Civil Code, Articles 3142, 3145, 3146.

Clark vs. Iselen, 21 Wall. 360.

If the cotton had been stored by the bankrupts, at
108 a time the unincumbered ownership was in them and the receipts had been pledged to the Canal Bank & Trust Company and subsequently withdrawn on trust receipts and then fraudulently pledged to the Commercial National Bank, the situation would be different, and no doubt the provisions of the act would apply, and decisions dealing with negotiable securities and bills of notes would have bearing. As it is, in the light of the above quoted authorities, the conclusion is irresistible that the Commercial National Bank takes nothing by the act and the title of the Canal Bank & Trust is superior.

The Canal Bank & Trust Company invokes the doctrine that where equities are equal the first in order of time must prevail. It may be that their contention is well founded, in view of the facts that their pledge was prior to that of the other bank; that neither has in its possession the documents pledged to it; and that same have been executed and cancelled. But entertaining the above views, it is unnecessary to consider this question, and with regard to it I express no opinion.

There will be judgment in favor of the Canal Bank & Trust Company as prayed for.

109 AGREEMENT IN MATTER OF COMML. NATL. BANK OF N. O. VS. CANAL LA. BANK TRUST CO.

Filed May 22, 1913.

United States District Court, Eastern District of Louisiana.

In the Matter of:
Dreuil & Company, Raymond Dreuil, Joseph Dreuil, Mrs. Virginia Dreuil, Widow of Emile Dreuil, Bankrupts.
No. 1725. In Bankruptcy.

Commercial National Bank of New Orleans
versus
Canal-Louisiana Bank & Trust Company.

In the above entitled cause it is agreed between undersigned counsel that the document offered by the Canal-Louisiana Bank & Trust Company, purporting to be a list of the original marks of certain cotton, upon which the Canal-Louisiana Bank & Trust Company claims a lien, and the document dated 16 day of December, 1912, purporting to be a list made out by Sporl's pickery, shall be taken up to the United States Circuit Court of Appeals in original in addition to copying the said documents in the record. It is further agreed that the value of the cotton in litigation in this cause between the Commercial National Bank and the receivers and the Canal-Louisiana Bank & Trust Company is over three thousand dollars ($3,000.00).

(Signed) MOONEY & JANVIER,
Attys. Canal-La. Bk. & T. Co.

(Signed) MERRICK, LEWIS, GENSLER & SCHWARZ,
Attys. Comml. National Bank.

(Signed) HALL, MONROE & LEMANN,
Attys. for Trustee.

110 DECREE ON PETITION OF COMMERCIAL NATIONAL BANK VS. CANAL-LOUISIANA BANK & TRUST CO., ETC.

Filed May 26, 1913, at 11:10 A. M.

United States District Court, Eastern District of Louisiana.

In the Matter of:
Dreuil and Company, Raymond Dreuil, Joseph Dreuil, Mrs. Virginia Russell, Widow of Emile Dreuil.
No. 1765. In Bankruptcy.

Decree.

This cause came on to be heard at this term on the petition of the Commercial National Bank and on the answer and counter-claim of the Canal Louisiana Bank and Trust Company and the answer and counter-claim of Jonas Hiller, trustee of Dreuil & Company, Raymond Dreuil, Joseph Dreuil, Mrs. Virginia Russell, widow of Emile Dreuil, bankrupts, and was argued by counsel; and, thereupon, upon consideration thereof, and for the written reasons of the Court on file,

It is ordered, adjudged and decreed that there be judgment in favor of the Canal Louisiana Bank and Trust Company and against the Commercial National Bank and against Jonas Hiller, trustee of the bankrupts Dreuil & Company, Raymond Dreuil, Joseph Dreuil and Mrs. Virginia Russell, widow of Emile Dreuil, maintaining the counter-claim or demand in reconvention of said Canal Louisiana Bank and Trust Company recognizing the said bank to be the pledgee of the hereinafter described cotton, and, accordingly, Jonas Hiller, trustee as aforesaid, is hereby authorized and commanded to turn over and deliver forthwith to the Canal Louisiana Bank and Trust Company the following cotton:

20 bales of cotton marked "BJJD"
10 bales of cotton marked "BJJD"
28 bales of cotton marked "FAKD"
2 bales of cotton marked "FAKD"
12 bales of cotton marked "BPID"
18 bales of cotton marked "BPID"

And the warehouse receipts therefor, being Nos. 2094, 2107, 2098, 2108, 2102, 2106 respectively of the New Planters Press, of the City of New Orleans, now in the possession and under the control of said Jonas Hiller, trustee, as aforesaid, subject to the obligation on the part of said Canal Louisiana Bank and Trust Company, as pledgee, to apply the same in ac-
111 cordance with the terms of its contract of pledge.

It is further ordered, adjudged and decreed that the claims of the Commercial National Bank and of Jonas Hiller, trustee as aforesaid, be dismissed at their cost.

(Signed) RUFUS E. FOSTER, Judge.

New Orleans, La., May 26, 1913.

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112 NOTICE OF APPEAL AND ACCEPTANCE OF SERVICE IN RE COMMERCIAL NATIONAL BANK VS. CANAL-LOUISIANA BANK & TRUST CO., ET AL.

Filed June 3, 1913.

In the Matter of:

Drieul & Co., et al., Bankrupts.

No. 1765. In Bankruptcy.

Commercial National Bank

vs.

Canal-Louisiana Bank & Trust Company.

Please take notice, that the undersigned, on behalf of the Commercial National Bank, hereby appeals from the decisions of this Court, rendered herein and entered on the 26th day of May, 1913, to the United States Circuit Court of Appeals for the Fifth Circuit.

New Orleans, La., May 28th, 1913.

Yours respectfully,

(Signed) MERRICK, LEWIS, GENSLER & SCHWARZ,

Attorneys for Commercial National Bank.

To:
Messrs. Mooney & Janvier,
Attorneys for Canal-Louisiana Bank & Trust Co.
Messrs. Hall, Monroe & Lemann,
Attorneys for Jonas Hiller, Esq., Trustee for Drieul & Company.
Service acknowledged.
(Signed) MOONEY & JANVIER,
Attorneys for Canal-Louisiana Bank & Trust Co.
(Signed) HALL, MONROE & LEMANN.

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113 PETITION OF COMMERCIAL NATIONAL BANK FOR APPEAL AND ORDER THEREON IN RE COMMERCIAL NATIONAL BANK VS. CANAL-LOUISIANA BANK & TRUST COMPANY.

Filed May 31, 1913.

In the District Court of the United States for the Eastern Dist. of La.

In the Matter of:
Drieul & Co., et al., Bankrupts.
No. 1765.

Commercial National Bank
vs.
Canal-Louisiana Bank and Trust Company.

To the Honorable the Judge of the District Court of the United States for the Eastern District of Louisiana:

The petition on appeal of the Commercial National Bank of New Orleans.

The above named Commercial National Bank of New Orleans, considering itself aggrieved by the judgment entered into on the 17th day of May, 1913, in the above entitled cause, does hereby appeal from said judgment to the United States Circuit Court of Appeals for the Fifth Circuit, for the reasons specified in the assignment of errors, which is filed herewith,

and it prays that this appeal may be allowed, and that a transcript of the record, proceedings and paper upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Fifth Circuit, with a supersedeas from the decree of the District Court of the United States for the Eastern District of Louisiana in the above entitled cause.

(Signed) MERRICK, LEWIS, GENSLER & SCHWARZ,
Attorneys for Commercial National Bank.

The foregoing claim of appeal is allowed to operate as a supersedeas upon the Commercial National Bank furnishing bond in the sum of $10,000.00 conditioned as the law directs.
May 31, 1913.

(Signed) RUFUS E. FOSTER, Judge.

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114 ASSIGNMENT OF ERRORS IN RE COMMERCIAL NATIONAL BANK VS. CANAL LOUISIANA BANK & TRUST COMPANY, ET AL.

Filed June 3, 1913.

United States Circuit Court of Appeals, Fifth Circuit.

In the Matter of:
Dreuil & Company, et al., Bankrupts.

Commercial National Bank
versus
Canal-Louisiana Bank & Trust Company anad Jonas Hiller, Trustee.

In the District Court of the United States for the Eastern District of Louisiana.

And now, on the 3 day of June, 1913, comes the said Commercial National Bank, of New Orleans, Louisiana, by its at-

torneys at law, Merrick, Lewis, Gensler & Schwarz, and says that the decree in said cause is erroneous and against the just rights of the said plaintiff, and assigns for error the following reasons:

I.

That the Court erred in this case in refusing to deliver the warehouse receipts representing the cotton claimed in this case and found in the hands of the bankrupts, which had been pledged to the Commercial National Bank by the bankrupts, and subsequently withdrawn by the bankrupts on trust receipts, or receipts recognizing the rights of the Commercial National Bank, and containing an agreement to account to said Commercial National Bank for either the cotton or its proceeds, if sold.

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II.

That the said Court erred in holding that the Canal-Louisiana Bank & Trust Company, which claims that said cotton had been pledged to it under a bill of lading and subsequently withdrawn on its trust receipt and sent to a certain pickery, and then put in a warehouse by the firm of Dreuil & Company, and the warehouse receipts taken out by Dreuil & Company, which warehouse receipts were then pledged, before the bankruptcy, for value, to the Commercial National Bank, being in good faith, and were subsequently withdrawn from the Commercial National Bank by Dreuil & Company, before their bankruptcy, on trust receipt, and being found in the possession of the bankrupt firm, and identified as the property pledged to the Commercial National Bank, had a prior lien to that of the second pledgee in good faith.

III.

That the Court erred in not giving effect to the uniform bill of lading law; the uniform warehouse receipt law of Louisiana, or to the general law or laws on the subject of pledge and in not recognizing the second and last pledgee of the cotton in contest in this case to be entitled to its proceeds.

IV.

That the Court erred in not holding that Dreuil & Company had sufficient title to the cotton received from the Canal-Louisiana Bank & Trust Company, under a trust receipt, reading, in a substantial part, as follows, to-wit:

"Received of the Canal Bank & Trust Company the bills of lading or other documents, or securities, as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances, the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipt, representing the undermentioned goods, within one day from the receipt thereof, this delivery being temporarily made
116 the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof, or the documents thereof for account of said bank," to make a valid pledge or transfer under the laws of Louisiana, or under general law, to the Commercial National Bank, acting in good faith for a valid consideration, and at a time not suspicious, and did make such a valid pledge or transfer to said bank.

V.

That the Court erred in holding that the Canal-Louisiana Bank & Trust Company had a prior lien to the cotton in contest in this case to that of the Commercial National Bank.

VI.

That the Court erred generally under the facts in this case in holding that the Canal-Louisiana Bank & Trust Company was entitled to the cotton in contest in this case, and its proceeds, and in holding that the Commercial National Bank was not entitled to said cotton and its proceeds.

(Signed) MERRICK, LEWIS, GENSLER & SCHWARZ, Attorneys.

117 APPEAL BOND.

Filed June 3, 1913.

Know all men by these presents, that we, the Commercial National Bank of New Orleans, as principal, and John H. Fulton, of New Orleans, as surety, are held and firmly bound unto Jonas Hiller, trustee of Dreuil & Co. Company, Raymond Dreuil, Joseph Dreuil & Mrs. Virginia Russell, widow of Emil Dreuil, bankrupts, and the Canal Louisiana Bank & Trust Company of New Orleans jointly and severally, in the full and just sum of ten thousand dollars, to be paid to the said Jonas Hiller, trustee, and the Canal Louisiana Bank & Trust Company of New Orleans, jointly and severally, their certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 27 day of May, in the year of our Lord one thousand nine hundred and thirteen.

Whereas, lately at a session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between The Commercial National Bank of New Orleans and Jonas Hiller, the trustee of Dreuil & Co., bankrupts, and the individual members of said firm and the Canal Louisiana Bank & Trust Company of New Orleans, a decree was rendered against the said Commercial National Bank of New Orleans and the said Commercial National Bank of New Orleans having obtained an order of appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Jonas Hiller, trustee, and the Canal Louisiana Bank & Trust Co., citing and admonishing them to be and appear before the United States Circuit Court of Appeals for the Fifth Circuit, to be holden at New Orleans, Louisiana, within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said Commercial National Bank of New Orleans shall prosecute its appeal to effect, and answer all damages and costs

if it fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of:

(Sig.) THE COMMERCIAL NATIONAL BANK OF NEW ORLEANS, [Seal]
(Sig.) J. H. FULTON, President. [Seal]
(Sig.) J. H. FULTON. [Seal]

Approved by:

(Signed) RUFUS E. FOSTER, Judge.

118 United States of America,
Eastern District of Louisiana, ss.

Personally appeared John H. Fulton, of New Orleans, who, being duly sworn, deposes and says that he is the surety on the within bond, that he resides in New Orleans, and is worth the full sum of twenty thousand dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) J. H. FULTON.

Subscribed and sworn before me this 27 day of May, 1913, at New Orleans, Louisiana.

(Sig.) PHILIP GENSLER, JR.,
[Seal] Notary Public.

.....,
U. S. Commissioner, Eastern District of Louisiana.

119 United States of America.

District Court of the United States, Eastern District of Louisiana.

Clerk's Office:

I, HENRY J. CARTER, Clerk of the District Court of the United States for the Eastern District of Louisiana, do hereby certify that the foregoing 118 pages contain and form a full, complete, true and perfect transcript of the record, assignment of errors and all proceedings in the case entitled "In the Matter of Dreuil and Company, et als., Bankrupts, "On the Petition of the Commercial National Bank and Counter-Claim of the Canal-Louisiana Bank and Trust Company," No. 1725 of the bankruptcy docket of the said Court, as made in accordance with instructions of counsel for the Commercial National Bank, appellant.

Witness my hand and the seal of said Court, at the City of New Orleans, Louisiana, this 16 day June, A. D. 1913.

[Seal] H. J. CARTER, Clerk.

That thereafter, the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission.

Extract from the Minutes of December 15th, 1913.

No. 2525.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS
versus
CANAL-LOUISIANA BANK & TRUST COMPANY and JONAS HILLER, Trustee of Estate of Dreuil & Company et al., Bankrupts.

On this day this cause was called, and, after argument by Edwin T. Merrick, Esq., for Appellant, and Henry Mooney, Esq., for Appellees, was submitted to the Court.

Opinion of the Court.

Filed February 23d, 1914.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2517.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS, Petitioner,
v.
JONAS HILLER, Trustee of the Estate of Dreuil & Co. et al., Bankrupts.

Petition to Revise and Superintend, United States District Court for Eastern District of Louisiana.

No. 2525.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS, Appellant,
v.
CANAL-LOUISIANA BANK & TRUST COMPANY and JONAS HILLER, Trustee, &c., Appellees.

Appeal from the United States District Court, Eastern District of Louisiana.

Before Pardee and Shelby, Circuit Judges, and Burns, District Judge.

By the COURT:

In these cases we find no error in the rulings and opinion of the District Court. The fact that the cotton in dispute was found in

the possession of the bankrupts is controlling. On the claims made therefor the duty of the bankruptcy court was to turn it over to the rightful possessor, the Canal-Louisiana Bank & Trust Company, the only lawful pledgee of the same. If the cotton or the warehouse receipts even had been retained by the Commercial National Bank a different case might have been presented.

The petition to revise is denied.

The decree appealed from is affirmed.

Judgment.

Extract from the Minutes of February 23d, 1914.

No. 2525.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS
versus
CANAL-LOUISIANA BANK & TRUST COMPANY and JONAS HILLER, Trustee of Estate of Dreuil & Company et al., Bankrupts.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decree of the said District Court in this cause, be, and the same is hereby affirmed;

It is further ordered, adjudged and decreed that the appellant, the Commercial National Bank of New Orleans, and the surety on the appeal bond herein, John H. Fulton, be condemned, in solido, to pay the costs of this cause in this Court, for which execution may be issued out of said District Court.

Petition for Appeal and Order Allowing Same.

Filed March 14th, 1914.

In the Circuit Court of Appeals of the United States for the Fifth Circuit.

In Bankruptcy.

No. 2525.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS
vs.
CANAL-LOUISIANA BANK & TRUST CO. and JONAS HILLER, Trustee of the Estate of Dreuil & Co., Raymond Dreuil, Joseph Dreuil, and Mrs. Virginia Dreuil, Widow of Emile Dreuil, Bankrupts.

The above mentioned appellants, the Commercial National Bank of New Orleans, respectfully show that the above entitled cause is

now pending in the United States Circuit Court of Appeals for the Fifth Circuit, and that a judgment has therein been rendered on the 23d day of February, A. D. 1914, affirming the decree of the District Court of the United States for the Eastern District of Louisiana, and that the matter in controversy in said suit exceeds one thousand dollars besides costs; that this cause is one in which the United States Circuit Court of Appeals for the Fifth Circuit has final jurisdiction and that it is a proper cause to be reviewed by the Supreme Court of the United States on Appeal.

Wherefore the said appellants pray that an appeal be allowed them in the above entitled cause directing the Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, to send the record and proceedings in said cause, with all things concerning the same, to the Supreme Court of the United States, in order that the errors complained of in the assignment of errors herewith filed by the said appellants, may be reviewed, and if error be found corrected according to the laws and customs of the United States.

(Signed) EDWIN THOMAS MERRICK,
RALPH J. SCHWARZ,
PHILIP GENSLER, JR.,
Solicitors for Appellants.

And now to-wit on March 14th, 1914:

It is ordered that the appeal with a writ of supersedeas be allowed as prayed for upon appellant furnishing bond in the sum of fifteen hundred dollars conditioned as the law requires.

(Signed) DON. A. PARDEE.

It is admitted that the amount in controversy in the above entitled cause exceeds the sum of $3,000, exclusive of interest and costs and the service of citation of appeal in the above entitled cause is hereby waived.

New Orleans, March 14th, 1914.

(Signed) JOHN JANVIER,
HENRY MOONEY,
Attorneys for Canal-Louisiana Bank & Trust Company.

(Signed) HALL, MONROE & LEMANN,
J. BLANC MONROE,
MONTE M. LEMANN,
Solicitors for Jonas Hiller, Trustee.

Assignment of Errors.

Filed March 14th, 1914.

United States Circuit Court of Appeals, Fifth Circuit.

No. 2525.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS, LA., Appellant,
vs.
CANAL-LOUISIANA BANK & TRUST COMPANY and JONAS HILLER, Trustee of Estate of Dreuil & Co. et al., Bankrupts, Appellees.

Assignment of Errors.

Now comes Appellant, the Commercial National Bank of New Orleans, La., by its counsel undersigned, and says that there is error in the record and proceedings herein and in the judgment of the Honorable the United States Circuit Court of Appeals for the Fifth Circuit, in this, to-wit:

I.

That the Court erred in this case in refusing to deliver the warehouse receipts representing the cotton claimed in this case, and found in the hands of the bankrupts, which had been pledged to the Commercial National Bank by the bankrupts, and subsequently withdrawn by the bankrupts on trust receipts, or receipts recognizing the rights of the Commercial National Bank, and containing an agreement to account to said Commercial National Bank for either the cotton or its proceeds, if sold.

II.

That the said Court erred in holding that the Canal-Louisiana Bank & Trust Company, which claims that said cotton had been pledged to it under a bill of lading and subsequently withdrawn on its trust receipt and sent to a certain pickery, and then put in a warehouse by the firm of Dreuil & Company, and the warehouse receipts taken out by Dreuil & Company, which warehouse receipts were then pledged before the bankruptcy, for value, to the Commercial National Bank, being in good faith, and were subsequently withdrawn from the Commercial National Bank by Dreuil & Company, before their bankruptcy, on trust receipt, and being found in the possession of the bankrupt firm, and identified as the property pledged to the Commercial National Bank, had a prior lien to that of the second pledgee in good faith and for value.

III.

That the Court erred in not giving effect to the uniform bill of lading law; the uniform warehouse receipt law of Louisiana, or to the general law or laws on the subject of pledge, and in not recog-

nizing the second and last pledgee of the cotton in contest in this case to be entitled to its proceeds.

IV.

That the Court erred in not holding that Dreuil & Company had sufficient title to the cotton received from the Canal-Louisiana Bank & Trust Company, under a trust receipt, reading in a substantial part, as follows, to-wit:

"Received of the Canal Bank & Trust Company, the bills of lading or other documents, or securities, as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances, the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipt, representing the undermentioned goods, within one day from the receipt thereof, this delivery being temporarily made — the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof, or the documents thereof, for account of said bank"

to make a valid pledge or transfer under the laws of Louisiana, or under general law, to the Commercial National Bank, acting in good faith for a valid consideration and at a time not suspicious, and did make such a valid pledge or transfer to said bank.

V.

That the Court erred in holding that the Canal-Louisiana Bank & Trust Company had a prior lien to the cotton in contest in this case to that of the Commercial National Bank.

VI.

That the Court erred generally under the facts in this case in holding that the Canal-Louisiana Bank & Trust Company was entitled to the cotton in contest in this case and its proceeds, and in holding that the Commercial National Bank was not entitled to said cotton and its proceeds.

Wherefore, appellant prays that said judgment and decree of the Honorable the Circuit Court of Appeals for the Fifth Circuit may be reversed, and that appellant may have an adjudication and decree in its favor.

(Signed) EDWIN T. MERRICK,
PH. GENSLER, JR.,
RALPH J. SCHWARZ,
Solicitors.

Bond on Appeal.

Filed March 14th, 1914.

UNITED STATES OF AMERICA:

Know all men by these presents, that we, the Commercial National Bank of New Orleans, La., and The American Surety Company of New York, are held and firmly bound, jointly and severally, unto The Canal Louisiana Bank and Trust Company, and Jonas Hiller, Trustee of Dreuil & Co., Bankrupts, and Trustee of the Individual Members of said Bankrupt firm, in the sum of Fifteen hundred Dollars, lawful money of the United States of America, to be paid to the said Canal-Louisiana Bank & Trust Company, and *or* Jonas Hiller, Trustee, in solido, their successors, heirs, Executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors and administrators, firmly by these presents; Sealed with our seals, and dated the 14th day of March, 1914, in the year of our Lord nineteen hundred and fourteen.

Whereas, the said Commercial National Bank of New Orleans, La., having heretofore, to-wit: on the 14th day of March, 1914, taken an appeal to the Supreme Court of the United States, from and to reverse the decree rendered and entered on the twenty-third day of February, 1914, by the Circuit Court of Appeals of the United States for the Fifth Circuit holding sessions in and for the District of Louisiana, in the suit of Commercial National Bank vs. Dreuil & Co. et al., Bankrupts, No. 2525 of the docket thereof.

Now the condition of the above obligation is, that if, the above bounden Commercial National Bank of New Orleans, La., shall prosecute its said appeal to effect, and shall answer all damages and costs if it shall fail to make good said appeal, then this obligation shall be void; otherwise to remain in full force and virtue.

Signed, Sealed and Delivered in the presence of

(Signed) THE COMMERCIAL NATIONAL BANK OF NEW ORLEANS,
J. H. FULTON, *President.*
AMERICAN SURETY COMPANY OF NEW YORK,
By CHAS. HOFFMAN,
Resident Vice-President.

Attest:

E. N. COBB, [SEAL.]
Resident Assistant Secretary.

The foregoing bond is approved this 14th day of March, 1914.

(Signed) DON A. PARDEE,
U. S. Circuit Judge in and for the Fifth Circuit.

Clerk's Certificate.

UNITED STATES OF AMERICA:

United States Circuit Court of Appeals, Fifth Circuit.

I, Frank H. Mortimer, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 107 to 121 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 2525, wherein Commercial National Bank of New Orleans is Appellant, and Canal-Louisiana Bank & Trust Company, and Jonas Hiller, Trustee of Estate of Dreuil & Company et al., Bankrupts, are Appellees, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 106 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 20th day of March, A. D. 1914.

[Seal United States Circuit Court of Appeals, Fifth Circuit.]

FRANK H. MORTIMER,
Clerk of the United States Circuit Court of Appeals.

THE UNITED STATES OF AMERICA:

The President of the United States to The Canal-Louisiana Bank and Trust Co., and Jonas Hiller, Trustee of Dreuil & Co., Bankrupts, Trustee of the Individual Members of said Bankrupt firm, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to the motion and order of appeal sued out and filed in the Clerk's Office of the United States Circuit Court of Appeals for the Fifth Circuit, in the cause wherein Commercial National Bank of New Orleans is appellant, and Canal-Louisiana Bank & Trust Company, and Jonas Hiller, Trustee of the Estate of Dreuil & Co., Raymond Dreuil, Joseph Dreuil and Mrs. Virginia Dreuil, widow of Emile Dreuil, Bankrupts, are appellees, to show cause, if any there be, why the judgment rendered against the said Commercial National Bank of New Orleans, as in said motion and order of appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglass White, Chief Justice

of the United States, this Fourteenth day of March in the year of our Lord one thousand nine hundred and Fourteen.

DON A. PARDEE,
United States Circuit Judge.

[Endorsed:] No. 2525. United States Circuit Court of Appeals, Fifth Circuit. Commercial National Bank, of New Orleans, Appellant, vs. Canal-Louisiana Bank & Trust Company et al., Appellees. Citation. U. S. Circuit Court of Appeals. Filed Mar. 14, 1914. Frank H. Mortimer, Clerk.

Endorsed on cover: File No. 24,140. U. S. Circuit Court Appeals, 5th Circuit. Term No. 426. Commercial National Bank of New Orleans, appellant, vs. Canal-Louisiana Bank & Trust Company and Jonas Hiller, trustee of Dreuil & Co. et al., bankrupts, etc. Filed March 31st, 1914. File No. 24,140.

Supreme Court of the United States.

No. 197 of October Term, 1915.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS,

Appellant,

vs.

CANAL-LOUISIANA BANK AND TRUST COMPANY AND JONAS HILLEN, TRUSTEE OF ESTATE,

Appellees.

Appeal From the United States Court of Appeals for the Fifth Circuit.

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Supreme Court of the United States.

No. 117 of October Term, 1915.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS,
Appellant,

versus

CANAL-LOUISIANA BANK AND TRUST COMPANY AND JONAS HILLER, TRUSTEE OF ESTATE,
Appellee.

Appeal From the United States Court of Appeals for the Fifth Circuit.

STATEMENT OF THE CASE.

Dreuil & Company, the bankrupts, some time previous to their adjudication as bankrupts, borrowed $65,000 from the Commercial National Bank on three notes, one dated November 7, 1912, for $25,000; one dated December 9, 1912, for $25,000; one dated December 19, 1912, for $15,000.

And at the time, to secure the said loans, Dreuil & Company pledged to the Commercial National Bank certain negotiable warehouse receipts and bills of lading for cotton to secure their indebtedness.

The notes, with the pledges and other stipulations included thereon, are copied in full in the record, pages 18, 19, 20, 21, 22, 23 and 24.

On December 17, 1912, Dreuil & Company withdrew 250 bales of cotton previously pledged to the bank and substituted 248 bales of other cotton as collateral to the notes.

In the new cotton substituted by Dreuil & Company was a negotiable warehouse receipt of the Planters' Press, No. 1941, for ninety bales, marked O I C O, and a negotiable warehouse receipt of the Planters' Press, No. 1942, for sixty bales of cotton, marked N O G M. (For copy of the substitution of collateral agreement, see pp. 33, 34.)

On December 20, 1913, Dreuil & Company withdrew from the bank on trust receipt the warehouse receipt of the Planters' Compress Company No. 1941, for the ninety bales of O I C O.

On December 28, 1912, Dreuil & Company withdrew from the bank on a similar trust receipt the warehouse receipt of the Planters' Compress Company No. 1942, for sixty bales of cotton marked N O G M (p. 9).

On December 31, 1912, Dreuil & Company were adjudicated bankrupts, and temporary receivers were appointed, who took charge of their assets and took possession of all cotton not sold and delivered.

Among the cotton found on hand with the bankrupts was the following cotton, **fully identified to be the cotton covered by the two Planters' Press receipts Nos. 1941 and 1942, already mentioned, which has been pledged to the Commercial National Bank.**

There were sixty bales of the N O G M, which had been remarked: 30 bales as B P I D and 30 bales as F A K D.

There were 30 bales of the O I C O found on hand which had been remarked as B J J D.

Most of this cotton had been sent to the wharf by the bankrupts for foreign shipment, but was subsequently taken in charge of the temporary receivers and hauled back to the Planters' Press, where the following warehouse receipts were subsequently issued by the Planters' Press to the

temporary receivers, and now to the trustee, by the press, covering all of said cotton, as follows:

Receipt No. 2094, for 20 bales of cotton, marked B J J D.
Receipt No. 2107, for 10 bales of cotton, marked B J J D.
Receipt No. 2098, for 28 bales of cotton, marked F A K D.
Receipt No. 2108, for 2 bales of cotton, marked F A K D.
Receipt No. 2102, for 12 bales of cotton, marked B P I D.
Receipt No. 2106, for 18 bales of cotton, marked B P I D.

It is not denied in this suit, that this cotton is the same cotton, in the same bales, which was pledged to the Commercial National Bank by Dreuil & Company, and withdrawn by them on trust receipt.

But when application was made to the trustee by the Commercial National Bank to have this cotton delivered back into the possession of the Commercial National Bank, the pledgee, to be sold to satisfy its pledge, the Commercial National Bank was informed by the trustee that the Canal-Louisiana Bank claimed the cotton under a previous pledge.

And the evidence showed that on December 13, 1912, 40 bales of cotton marked N O G M and 60 bales of cotton marked O I C O had been withdrawn from the Canal-Louisiana Bank and Trust Company by said Dreuil & Company under trust receipts, and the 60 bales of O I C O were sent to a pickery and divided into 90 bales, and that the 40 bales of N O G M had been sent to a pickery and divided into 60 bales, then brought to the warehouse of the Planters' Press and the cotton covered by the warehouse receipts Nos. 1941 and 1942 taken out for the cotton, and these warehouse receipts are the ones which were thereafter pledged, as stated, to the Commercial National Bank. (37.)

The present suit is brought by the Commercial National

Bank against the trustee and the Canal-Louisiana Bank to recover the cotton referred to.

The Canal-Louisiana Bank, after denying plaintiff's allegations, reconvened, claiming the cotton because of their having previously had the cotton pledged to them.

The contention of the Commercial National Bank is that when Dreuil & Company, having possession of the negotiable bills of lading for the cotton in contest in this case, and having in lieu of the bills of lading taken negotiable warehouse receipts in their own name, which they subsequently pledged to that bank in good faith and for value received, the rights of the Commercial National Bank to the cotton so pledged were supreme.

Conceding it to be true, it follows that the pledge to the Commercial National Bank was perfect, and that the withdrawal of the cotton under trust receipt could not destroy the lien of the bank thereon.

The Canal-Louisiana Bank and Trust Company admits that the pledge to the Commercial National Bank was a valid pledge at the time it was made, and that if, when Dreuil & Company were adjudicated bankrupts, the cotton was found in the hands of the Commercial National Bank, its rights could not be contested. They contended that, although the second pledge was perfectly good up to that time, yet in some mysterious way the rights of the Canal-Louisiana Bank revived, after the bankruptcy, even so as to prime the subsequent valid pledge.

The judgment of the lower Court was in favor of this contention, and we sued out an appeal to the United States Circuit Court of Appeal.

In that court the judgment was affirmed in a per curiam decision in the following language:

PER CURIAM. "In these cases we find no error in the rulings and opinion of the District Court. The fact that the cotton in dispute was found in the possession of the bankrupts is controlling. On the claims made therefor the duty of the bankruptcy court was to turn it over to the rightful possessor, the Canal-Louisiana Bank & Trust Company, the only lawful pledgee of the same. If the cotton or the warehouse receipts even had been retained by the Commercial National Bank, a different case might have been presented.

"The petition to revise is denied. The decree appealed from is affirmed."

This case is appealed to this Court under section 6 of Act of March 3rd, 1891 (26 State at Large p. 828.)

Hewitt vs. Berlin Machine Works, 194 U. S. 300.
Knapp vs Milwaukee Trust Co., 216 U. S. 553.
Greey vs. Dockendorf, 231 U. S. 514.
Hobbs vs. Dowst, 231 U. S. 699.

SPECIFICATION OF ERROR.

At the time the bill of lading was pledged by Dreuil & Co., to the Canal-Louisiana Bank and withdrawn by them under trust receipt the Uniform Bill of Lading Act was in force in Louisiana (Act 94 of 1912).

The following sections of this act are here quoted for the convenience of the Court:

"Section 11. A carrier in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by—

"(a) An offer in good faith to satisfy the carrier's lawful lien upon the goods.

"(b) An offer in good faith to surrender properly indorsed, the bill which was issued for the goods, if the bill is negotiable and

"(c) A readiness and willingness to sign when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

"In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure.

"Section 12. A carrier is justified, subject to the provisions of the three following sections, in delivering goods to one who is

"(a) A person lawfully entitled to the possession of the goods, or

"(b) The consignee named in a Non-Negotiable Bill for the goods, or

"(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate endorsee of the consignee."

"Section 28. A negotiable bill may be negotiated by delivery where by the terms of the bill, the carrier undertakes to deliver to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank."

"Section 29. A negotiable bill may be negotiated by the endorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such endorsements may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner."

"Section 31. A negotiable bill may be negotiated by any person in possession of same, however such possession may have been acquired if, by the term of the bill the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiations the bill is in such form that it may be negotiated by delivery."

"Section 32. A person to whom a negotiable bill has been duly negotiated acquires thereby—

"(a) Such title to the goods, as the person negotiating the bill to him had **or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and**

"(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him."

"Section 38. The validity of the negotiation of a bill is not impaired by the fact that such obligation was a **breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same**

by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated or a person to whom the bill was subsequently negotiated, gave value therefor in good faith without notice of the breach of duty, or fraud, accident, mistake, duress or conversion."

"Section 39. When a person having sold, mortgaged or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods continues in the possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge or other disposition thereof to any person receiving the same in good faith for value and without notice of the previous sale **shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation."**

"Section 42. Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right in stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation."

(N. B.) The italics and black type in the above citation, and in nearly all the citations of this brief, are the writer's.

Complainant's contention is simply that when the Canal Bank delivered to Dreuil & Co., the bills of lading that the

railroad was justified in recognizing Dreuil and Company as the owners of the cotton—and the Canal Bank parted with its title to the cotton then and there.

That when Dreuil & Co., took the cotton to a pickery and then to a public warehouse and on that particular cotton took out a warehouse receipt and pledged that warehouse receipt to the Commercial National Bank, the Commercial National Bank held the title to the cotton as pledgee in good faith.

The Uniform Warehouse Receipt Law was in force in Louisiana at the time of the pledge to the Commercial National Bank and is still in force—

(Act 221 of 1908.)

We think it sufficient to quote the following provisions:

> "Sec. 25. If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they cannot thereafter while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution unless the receipt be first surrendered to the warehouseman or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the Court."

> "Sec. 40. A negotiable receipt may be negotiated—(a) By the owner thereof or (b) by any person to whom the possession or custody of the receipt has been entrusted by the owners if by the terms of the

receipt the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery.

"Sec. 41. A person to whom a negotiable receipt has been duly negotiated acquires thereby—(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such **title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value**; and (b) the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him."

"Sec. 47. The **validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation or by the fact that the owner of the receipt was induced by fraud, mistake or duress to entrust the possession or custody of the receipt to such person,** if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor without notice of the breach of duty or fraud, mistake or duress."

"Sec. 49. Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has

been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller unless the receipt is first surrendered for cancellation."

Under the uniform Bill of Lading Act cited above the Canal-Louisiana Bank by the delivering of its bill of lading to Dreuil & Co., lost its title to the cotton. By the uniform Warehouse Receipt Law, when Dreuil & Co., pledged the warehouse receipt to the Commercial National Bank, the latter Bank **acquired title and the Canal-Louisiana Bank was and is estopped from disputing that title.**

ASSIGNMENTS OF ERROR.

The formal assignments of error are:

I.

That the Court erred in this case in refusing to deliver the warehouse receipts representing the cotton claimed in this case, and found in the hands of the bankrupts, which had been pledged to the Commercial National Bank by the bankrupts, and subsequently withdrawn by the bankrupts on trust receipts, or receipts recognizing the rights of the Commercial National Bank, and containing an agreement to account to said Commercial National Bank for either the cotton or its proceeds, if sold.

II.

That the said Court erred in holding that the Canal-Louisiana Bank and Trust Company, which claims that said cotton had been pledged to it under a bill of lading, and subsequently withdrawn on its trust receipt, and sent to a cer-

tain pickery, and then put in a warehouse by the firm of Dreuil & Company, and the warehouse receipts taken out by Dreuil & Company, which warehouse receipts were then pledged, before the bankruptcy, for value, to the Commercial National Bank, being in good faith, and were subsequently withdrawn from the Commercial National Bank by Dreuil & Company, before their bankruptcy, on trust receipt, and being found in the possession of the bankrupt firm, and identified as the property pledged to the Commercial National Bank, had a prior lien to that of the second pledgee in good faith.

III.

That the Court erred in not giving effect to the uniform Bill of Lading Law, the uniform Warehouse Receipt Law of Louisiana, or to the general law or laws on the subject of pledge, and in not recognizing the second and last pledgee of the cotton in contest in this case to be entitled to its proceeds.

IV.

That the Court erred in not holding that Dreuil & Company had sufficient title to the cotton received from the Canal-Louisiana Bank and Trust Company under a trust receipt, reading, in a substantial part, as follows—to wit:

> "Received of the Canal Bank and Trust Company the bills of lading or other documents, or securities, as enumerated below, held by the said bank as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specially apply against the very same advances, the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping docu-

ments or warehouse receipt, representing the undermentioned goods, within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof, or the documents thereof, for account of said bank."

to make a valid pledge or transfer under the laws of Louisiana, or under general law, to the Commercial National Bank, acting in good faith for a valid consideration, and at a time not suspicious, and did make such a valid pledge or transfer to said bank.

V.

That the Court erred in holding that the Canal-Louisiana Bank and Trust Company had a prior lien to the cotton in contest in this case to that of the Commercial National Bank.

VI.

That the Court erred generally under the facts in this case in holding that the Canal-Louisiana Bank and Trust Company was entitled to the cotton in contest in this case, and its proceeds, and in holding that the Commercial National Bank was not entitled to said cotton and its proceeds.

ARGUMENT.

Both of the uniform laws entering so closely in the issue of this case provide that:

> "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the States which enact it."

Sec. 52 of Act 94 of 1912, and Sec. 57 of Act 221 of 1908.

The Court will take judicial cognizance of the fact that both laws were passed also in the interest of commerce and to facilitate the **making of good titles to property by the negotiation of the instruments referred to.**

These two statutes to-day, as we understand it, are the law which control this case, irrespective of what at any previous time may have been the law.

So when Dreuil & Company, on the 13th day of December, withdrew from the Canal-Louisiana Bank the bills of lading for the cotton in question, pledged to the bank for money loaned, and, after sending it to a pickery, obtained two negotiable warehouse receipts for it, and on December 17, 1912, pledged these warehouse receipts for the same cotton (p. 33), that pledge was a **valid and binding pledge** so long as the Commercial National Bank was acting in good faith, and in this case the good faith of the Commercial National Bank is not questioned.

It is not contested, by counsel for the Canal-Louisiana Bank and Trust Company, that the pledge up to this point was a valid and binding pledge.

But it is contended that because the cotton which had been pledged by Dreuil & Company, through the negotiable warehouse receipt, to the Commercial National Bank, by a valid pledge under the uniform laws above cited, had been surrendered to Dreuil & Company on a trust receipt, and because Dreuil & Company were adjudicated bankrupts, all the rights of the Commercial National Bank, which were absolutely good, were thereby destroyed, and all the rights of the Canal-Louisiana Bank, which had been completely destroyed, were thereby revived.

This contention would frustrate the object of the Uniform Bill of Lading Act and the Uniform Warehouse Receipt Act both.—The case of **Baker Co., vs. Brown, 100 N. E. 1026 (214 M. 196)** illustrates the effect of the Uniform Bill of Lading Law where the owner or pledgee parts with his property by trust receipt.

In that case the defendant, Brown, was an absolute owner of the bill of lading.

He wrote on the bill of lading covering hides "deliver to the Massachusetts Hide Corporation—" and delivered the bill of lading to the Hide Corporation with the understanding that the Hide Corporation should take the bill as Brown's agent, **without any design to pass title but with authority to sell to one Baker whom the Hide Corporation falsely represented that it had obtained as a purchaser thereof—**

The Hide Corporation signed a trust receipt to Brown acknowledging they had received the goods: "in trust to deliver same to Roland M. Baker," who had purchased same and to obtain from the purchaser the proceeds and to deliver immediately the proceeds to Brown, the owner.

The Columbia Leather Company took the hides from the Hide Corporation in payment of a debt due by the Hide Corporation. The transfer of title by the Hide Corporation to the Columbia Leather Company was held to be valid. The subsequent transfer by the Columbia Leather Company was also upheld.

Judge Sheldon, as the organ of the Court, after stating the facts of the case, says:

> "By this transaction, under the common law as declared by our decisions, the title to the hides remained in the defendants; The Hide Company had no power to dispose of them in any other way than

by a sale to Baker; and no one else could by a purchase from the Hide Company or by any dealing with it acquire a title to the hides which would be good against the defendants. **The bill of lading merely represented the goods themselves;** the Hide Company had no greater right and could pass to any purchaser other than Baker no greater right than if its possession with this limited authority had been of the goods themselves instead of the bill of lading which was their representative. Stollernwerck vs. Thacher 115 Mass., 224, 227; Moore vs. Wyman, 146 Mass., 60 15 N. E. 104; Cox vs. Central Vermont Railroad, 170 Mass., 129, 136, 49 N. E. 97; Commercial National Bank vs. Bemis, 177 Mass., 95, 98, 58 N. E. 476, Moore vs. Bird, 190 Mass., 400, 408, 77 N. E. 643; Collateral Loan Co., vs. Stallings, 195 Mass., 135, 80 N. E. 811. See the same effect Brown vs. Billington, 163 Pa. 76, 29 Atl. 904, 43 Am. St. Rep. 780; Western National Bank vs. York Silk Mfg. Co., 225 Pa. 442, 74, Atl. 244; Moore vs. Kidder, 106 N. Y. 32, 12 N. E. 818; Solteau vs. Gerdau, 119 N. Y. 380 23 N. E. 864, 16 Am. St. Rep. 843.

"But before any of these transactions took place our Uniform Bill of Lading Act, St. 1910, c. 214, had been passed. Section 5 of that act provides that 'a bill in which it is stated that the goods are consigned or destined to the **order of any person named in such bill, is a negotiable or order bill.**' By Section 29 'a negotiable bill may be negotiated by the endorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified **person it may be negotiated again by the indorsement of such person in blank or to an-**

other specified person.' By Section 32 anyone to whom a negotiable bill has duly been negotiated acquires thereby 'such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, **and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value.'** By Section 38, 'the validity of the negotiation of a bill is **not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion,** if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, **gave value therefor in good faith without notice of the breach of duty, or fraud, accident, mistake, duress or conversion.'** "

"And Section 39 further adds that where 'a person having sold, mortgaged or pledged goods which are in a carrier's possession, and for which a negotiable bill has been issued, or having sold, mortgaged or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill the subsequent negotiation thereof by that person under any sale, pledge or disposition thereof to any person receiving the same in good faith for value and without notice of the previous sale shall have the same effect as if the purchaser of the goods or bill had expressly authorized the subsequent negotiation.' "

"The effect of the statute has been to **change fundamentally the rights of the parties to transactions within its purview.** In the present case if the statute applies to it, when the defendants delivered their bill

of lading to the Hide Company, with their unconditional and unlimited indorsement thereon, **they entrusted their property to the honesty of that Company and relinquished their right to set up their title against anyone who might in good faith for value and without notice of the duty which rested upon the Hide Company, purchase from that Company the goods described in the bill and take from that Company a delivery** of the bill itself duly indorsed by it. The previous decisions of this Court by which the defendants were protected against the consequence of their agent's breach of duty, **have been abrogated and nullified by the statute.** As is said in Williston on sales Sec. 437, the statute 'renders unsafe what has doubtless been a common practice of bankers,—**the entrusting of the documents for a special purpose to the pledgor of them or the proposed buyer of the goods.**' The Columbia Company seems from the findings of the Judge to have made, or at any rate it could be found to have made and there is no finding that it did not make, its purchase from the Hide Company in good faith and without notice of any limitation upon the authority or any breach of duty of the Hide Company. It gave value for its purchase."

Roland M. Baker Co., vs. Brown, 100 N. E. 1026-1027.

II.

While Williston comments on the danger of trust receipts, he does not mean to say and cannot say that trust receipts are not now upheld by the courts where the debtor has not parted with the title conferred on him by the Uniform Bill of Lading Act.

Trust receipts have been recognized throughout the nation as valid and useful agreements necessary for the carrying on of commercial business.

By the trust receipt, no title is given to the person receiving the goods.

In a bankruptcy case, where the goods were delivered on trust receipt and found in the hands of the trustee, Judge Cross has said:

> "The bankrupts gained no property by the receipts, nor did the petitioners part with any. Beyond retaining their custody for the petitioners and a power of sale for their account, the bankrupts could do nothing with the goods **without a violation of their trust agreement.** The learned referee has dealt with the subject as if the preservation of petitioners' rights required that a chattel mortgage should have been executed and filed in the proper place of registry. I am unable to assent to this view. Such a view assumes that the bankrupt obtained title when the bills of lading were surrendered; but it has been shown that it did not. **No loan was made on the faith of the trust receipts, nor were any property rights lost or acquired thereby.** No element of a conditional sale or chattel mortgage appears in the transaction. Consequently, none of the requisites to the validity of such instruments was required. This proposition was dealt with in **First National Bank of Cincinnati vs. Kelly, Sheriff,** 57 N. Y. 34, 36.
>
> "The effect of trust receipts similar to those in question has been considered and their validity upheld in various cases, among them **Brown vs. Billington,** 163 Pa. 76 (29 Atl. 904, 43 Am. St. Rep. 780); **New Haven Wire cases,** 57 Conn. 372 (18 Atl. 266,

5 L. R. A. 300); **Moore vs. Wyman** 146 Mass. 60 (15 N. E. 104.)"

In re Reboulin Fils & Co., Inc., 165 F. 248.

As the Court of Appeals of the Second Circuit says, speaking of the trust receipt used in that case **(In re Cattus):**

"This trust receipt contains clauses some of which describe the right of the banker in the goods as property or title and others as a lien. But the inconsistency is apparent rather than real, because, as Judge Hough pointed out in the court below, it admits easily of division into two parts: First, an acknowledgment that the bankers are owners until payment of the acceptance for the purchase price of the specific goods, and thereafter they are lienors for any other balance of indebtedness due from the bankrupt, however arising. Inasmuch as the proceeds of all the goods as well as all the goods in specie, now in the hands of the trustee and of the banker, are insufficient to pay the acceptances for the price of the specific goods covered by the bills of lading attached to the acceptances, we need not consider the clauses of the trust receipt relating to liens for general indebtedness or determine whether such pledge or lien would be good against the trustee.

"The purpose of the parties, describe the trust receipt as you will, was to keep the title to the goods in the bankers until their acceptances for the price of the goods were paid. The Courts, without always defining exactly what the relations between the parties is or always defining it in the same way, still are astute to protect the rights of the banker in such case. **(Moors vs. Kidder,** 106 N. Y. 32, 12 N. E. 818, **Drexel vs. Pease,** 133 N. Y. 129, 30 N. E. 732,

National Bank vs. Rogers, 166 N. Y. 380, 59 N. E. 922; Moors vs. Drury, 186 Mass. 424, 71 N. E. 810, New Haven Wire Co. cases, 57 Conn. 352, 18 Atl. 266, 5 L. R. A. 300).

"It would be almost inequitable that the bankrupt or his trustee should escape from the performance of this obligation for the benefit of **anyone except a bona fide purchaser for value or creditors protected by statute.** Extended discussion of the authorities is not necessary. They are considered in the report of A. L. Everett, Esq., as Special Master in the case of **Charavay & Bodvin vs. York Silk Mfg. Co.** (C. C.), 170 Fed. 819"

In re Cattus, 183 F. 735.

These goods, pledged to the Commercial National Bank, were delivered to Dreuil & Company on the trust receipt plan, which plan is best described by Judge McPherson in **In re Dunlap Carpet Company,** as follows:

"The full title to the wool was originally in the bank, and was never divested. Without extending this opinion by somewhat tedious detail, it is enough to say that I understand the Assets Company to admit (and if not I find the fact to be) that all the wool—for it is conceded that the three shipments stand on the same footing—was imported under the well-known and vastly-important arrangement known as the 'trust receipt' plan. By this arrangement a banker advances money to an intending importer, and thereby lends his aid of capital, of credit and of business facilities and agencies abroad to the enterprise of foreign commerce. Much of this trade could hardly be carried on by any other means, and, therefore, it is of the first importance that the fun-

damental factor in the transaction—the banker's advance of money and credit—should receive the amplest protection. Accordingly, in order to secure that the banker shall be paid (or that he may be able to protect his acceptances) at the critical point—that is, when the imported goods finally reach the hands of an intended vendee in this country—the banker takes the full title to the goods at the very beginning; he takes it as soon as the goods are bought and settled for by his payments or acceptances in the foreign country, and (speaking generally) he continues to hold the title as his indispensable security until the goods are sold in the United States and the vendee is called upon to pay for them. This security is not an ordinary pledge by the importer to the banker, for the importer has never owned the goods, and, moreover, he is not able to deliver the possession; but the security is the complete title invested originally in the banker, and this characteristic of the transaction has again and again been recognized and protected by the Courts. Of course, the title is at bottom a security title, as it has sometimes been called, and the banker is always under the obligation to reconvey; but only after his advances have been fully repaid and after the importer has fulfilled the other terms of the contract. At present, however, we have nothing to do with such a situation, and need not discuss it. The facts here show uninterrupted title in the bank down to the time when the goods were delivered to the Carpet Company, and show also that the terms of the contracts respecting the repayment of advances had not been fulfilled. As already stated, the trust receipt practice is of great value to importers; with-

out it much of our foreign trade would be impossible, because the individual importer lacks the necessary capital and foreign credit. An especially pertinent authority is a decision recently made in this circuit (**Century Throwing Co. vs. Muller,** 197 Fed. 252, 116 C. C. A. 614), in which the subject has been examined with care by Judge Gray. He refers to some of the other decisions, and I may add **In re Cattus,** 183 Fed. 733 (106 C. C. A. 171); **In re Coe** (D. C.), 169 Fed. 1002; **s. c.,** 183 Fed. 745 (106 C. C. A. 181.)"

In re Dunlap Carpet Co., 206 F. 730, 731.

In our case the original title is not in the Canal-Louisiana Bank because they have **been divested of their title to the bill of lading under the Bill of Lading Act;** but the title of the Commercial National Bank is not divested because **the cotton covered by their warehouse receipt validly issued was found in the possession of the bankrupt.**

The testimony of the accountant and expert of the receivers shows this fact clearly and he is not contradicted by the evidence:

By Mr. Merrick:

Q. What is your name?

A. Elkin Moses.

Q. I show you trust receipt dated December 20, 1912, for 90 bales of cotton marked O I C O, Planters' Press Receipt No. 1941. Will you please state if any of that cotton is in the hands of the Receiver?

A. Not marked O I C O. The records show that on December 28, 1912, 30 bales originally marked O I C O were remarked B J J D, and were shipped on the Steamship Virginie, for Havre, for account of Dreuil & Company.

Q. Did they go to Havre?

A. They did not.

Q. Where are they now?

A. They were sent back to the Planters' Press, which Press issued other receipts, No. 2049, dated January 8, 1913, for 20 bales, and No. 2107, dated January 8, 1913, for ten bales, both receipts being for account of the Receivers of Dreuil & Company.

Q. How was the cotton marked?

A. B J J D.

Q. And these receipts are now in the hands of the receivers?

A. Yes, sir.

Q. Now I show you a trust receipt dated December 28, 1912, for Planters' Press No. 1942, N O G N, 60 bales of cotton. Will you tell me if any of that cotton is in the hands of the receivers?

A. N O G N, that mark is a little complicated. The records of Dreuil & Company show that on December 28, 1912, there were 60 bales N O G N, remarked as follows: 30 bales marked B P I D and 30 bales marked F A K D. They were sent to the Steamship Virginie, on account of Cornille & DeBlonde, were recovered by the receivers and sent back to the Planters' Press, who issued the following receipts, all dated January 8, 1913, and made out in the name of the Receivers of Dreuil & Company: No. 2098, 28 bales F A K D; No. 2108, 2 bales F A K D; No. 2102, 12 bales B P I D; No. 2106, 18 bales B P I D. All the receipts are in the possession of the trustee.

Q. Do the books of Dreuil & Company show that they received the trust receipts from the Commercial National Bank for this cotton marked O I C O and N O G N?

A. The books show that on December 20th they withdrew Planters' Press receipt No. 1941 for 90 bales O I C O.

Q. From whom?

A. From the Commercial National Bank. And on December 28th, that they withdrew from the same bank Planters' Press receipt No. 1942, calling for 60 bales N. O. G. M.

Transcript, pages 39 and 40.

The bill of lading and trust receipt stand on the same plane according to modern usage and legislation. Each represents the property mentioned therein, and a delivery of the warehouse receipt is a constructive delivery of the goods. As Judge Clark, in **Bush vs. Export Storage Co.**, says:

> "In reference to cases, I have not regarded it as essential, in view of the close analogy, to point out the distinction between bills of lading, as symbols of property, and warehouse receipts. The former, by mercantile law and usage, stands as substitutes for, and as symbolic representatives of, the goods described, and are, in a general sense, negotiable. The transfer passes the title, though the instruments are not negotiable, in the full sense of the law merchant, in the absence of statute. Warehouse receipts, in like manner, are now regarded as symbols of property, and their transfer passes the title, and by statute of the State of Tennessee they are made negotiable; and it would seem that they are quasi-negotiable instruments under the law of Alabama, in the absence of a restrictive indorsement of the instrument. However this may be, it is well settled that the title to the property described passes by the indorsement, in due course of trade, for value, of both classes of instruments; and cases relating to one class of instruments, so far as the transfer of pos session is concerned, are equally applicable to instruments in other cases."

Bush vs. Export Storage Co., 136 Fed. 935.

The fact that a pledge is not destroyed by the pledgee entrusting the pledgor with the title to the goods pledged (when the goods pledged can still be identified in the pledgor's hands) is no longer open to question, **unless the pledgor pledges the property to someone else acting in good faith.**

One of the best cases on the point is that of **N. Y. Security and Trust Co. vs. Lipman & Co.:**

In this case the goods were consigned to several banks and bankers, who released the goods to Lipman & Company on trust receipt. Lipman & Company put them in a warehouse and by agreement substituted other goods therefor. Subsequently Lipman & Company pledged the warehouse receipts to the New York Trust Company. The Court held the second pledge to be valid.

> "If the shipper to this country of goods originally owned by himself delivers the bills of lading and consular invoices to bankers, and the latter entrust them to the shipper's representative here, on receiving from him, by secret agreement, receipts stating that the goods are the property of the bankers, and are to be held in trust for them, and that the proceeds of the sale are to be remitted to them, so that the shipper is, in effect, entrusted with the documentary evidence of ownership by which he can import the goods and obtain warehouse receipts therefor, for the purpose of selling the goods as the agent of the bankers, the transaction comes within the Factors' Act, **and the shipper is to be deemed the true owner of the goods as to a stranger to the secret agreement and trust receipts, who in good faith and for value takes from the shipper warehouse receipts issued to the latter."**

N. Y. Sec. and Trust Co. vs. Lipman & Co. 157 N. Y. 551.

The same case was about the same time decided by the United States Court of Appeals. This is the statement of the case as taken from the syllabus:

> "Lipman & Company, merchants at Dundee, entered into an agreement with Blydenstein & Company, bankers at London, by which, in consideration of the acceptance by Blydenstein & Company of drafts drawn against the shipments to Lipman & Company's New York house, they agreed to deliver to Blydenstein & Company the bills of lading of such shipments, which should then be regarded as consigned by Blydenstein & Company to Lipman & Company's New York house, the proceeds to be specially accounted for as soon as the goods were sold. Goods were shipped and drafts drawn and accepted pursuant to this agreement for a considerable time, but no special remittances of proceeds were made, Blydenstein & Company not requiring the same so long as they were kept in funds to meet the drafts. When shipments were made the bills of lading and other documents were sent by Lipman & Company to Blydenstein & Company in London, and by them in turn delivered to Lipman & Company's New York house, enabling them to take the goods from the custom-house and deal with them as their own, and making, in return, a so-called 'trust receipt,' by which Lipman & Company acknowledged receipt of the goods on consignment from Blydenstein & Company, and agreed to remit the proceeds specially. The goods, when received by Lipman & Company, at New York, were placed in a bonded warehouse, and

receipts taken for them, and were afterwards delivered, from time to time, on orders of Lipman & Company, to persons to whom they were sold, Lipman & Company's dealings being large and shipments being received every two or three days and deliveries made from day to day. About the time of their agreement with Blydenstein & Company, Lipman & Company established with the bonded warehouse a course of dealing by which the warehouse issued a negotiable open receipt to Lipman & Company for certain specified quantities of burlap without specifying any particular bales, and held against such open receipts those bales which had been longest in store, delivering on Lipman & Company's orders the oldest bales and substituting later bales under the open receipts, holding always a sufficient quantity to cover the outstanding open receipts, under which the holders could at any time call for the quantities specified in the receipts from the warehouse. In September, 1892, the New York Security and Trust Company made a loan to Lipman & Company solely upon the security of certain of the open receipts of the warehouse for bales of burlap. About the same time Blydenstein & Company accepted drafts against a shipment of burlap and forwarded the bills of lading, etc., according to their custom, to Lipman & Company at New York, who placed the goods in the warehouse, the owners of which had no notice of any interest of any other person than Lipman & Company in such goods. In December, 1892, Lipman & Company failed, and at that time, by the process of transfer in the warehouse, the bales of burlap consigned by Blydenstein & Company to Lipman & Company, at New York, in September,

were held under the open receipts in the hands of the New York Security and Trust Company as security, and upon the request of the New York Security and Trust Company for a new receipt in its own name, were held under such receipt. *Held*, that the pledge of the open receipts to the New York Security and Trust Company as security gave that company a valid lien upon the bales then in store; that the release of the older bales constituted a valuable consideration for subjecting the new bales, as deposited, to the same lien; and that, under the New York Factors' Act (Laws 1830, c. 179), providing that every factor or agent entrusted with the posession of a bill of lading or other document, or of merchandise for sale or as security, shall be deemed the owner, so as to give validity to a sale of or advance upon the same, the New York Security and Trust Company acquired a lien upon the bales consigned by Blydenstein & Company to Lipman & Company, at New York, superior to the rights of Blydenstein & Company."

Blydenstein & Co. vs. New York Security and Trust Co., 67 Fed. 469, 470.

In the body of the opinion Judge Lacombe says:

"On September 7, 1892, when the trust company discounted Lipman's note, that firm was in possession of the 500 bales, which, whether original or substituted, were held by the warehouse against the outstanding five receipts. For aught that appears in the case, Lipman & Company owned all these bales; but, if they did not, **they certainly were entrusted with the possession of them, and as certainly the loan was made by the trust company upon the faith of such possession.** The contract evidenced in the

collateral note, whereby Lipman & Company pledged the 500 bales which the five December negotiable receipts called for, was therefore valid, and it is difficult to see how it could be affected by the circumstances that there had theretofore been changes in the units, the aggregate being the same and precisely what the receipts called for—viz., 500 bales of Lipman & Company's burlaps of various marks and numbers. Upon these 500 bales the trust company, by the contract of September 7, 1892, obtained a valid lien to the extent of its advances. There was much discussion on the argument as to whether or not the transfer of open receipts which called for a given quantity only, without specifying marks or numbers, would constitute a present pledge of anything. It is unnecessary to review the various authorities or to determine to what extent the rules of law which have been applied to grain in bulk (Kimberly vs. Patchin, 19 N. Y. 330) to bricks in kiln; (Crofoot vs. Bennett, 2 N. Y. 258), to barrels of flour; (Pleasant vs. Pendleton, 6 Rand [Va.] 473), to mill culls; (Wager vs. R. R. Co., 79 Mich. 648, 44 N. W. 1113), and to apple barrels (Carpenter vs. Graham, 42 Mich. 191, 3 N. W. 974), applied to bales of burlap substantially alike in kind, quality and value. The objection is based on the assumption that not only did the receipts fail to state what bales were pledged, but that when the pledge was made the pledged bales referred to in the five receipts were in no way segregated from those not pledged. This, however, is not the testimony. It is true that the warehouseman was unable, at the time of the trial, to state which bales, by marks and numbers, were evidenced by these five negotiable receipts on December 1, 1891, but he by no means testified that

they were not known *then*. On the contrary, he expressly stated that 'on December 1st, if you had called, we could have given you the list—an exact list of every bale.' No permanent record of the memoranda by which new bales were substituted in place of bales withdrawn was kept, so that the witness was unable at the trial to state the bales which in succession were represented by each open receipt ever since it was issued by the company; but substitution for old bales, when made, was made from the next oldest bales; and, while the memoranda themselves existed, there could have been no difficulty about determining which these were. Had the transaction of September 7, 1892, been a sale of 500 bales evidenced by the December receipt, the warehouse company would not, so far as the evidence showed, have had any difficulty in producing from the total quantity in store on that day the bales which, by the process of substitution arranged for between its officers and Lipman & Company, had taken the place of those originally on December 1st held by it to meet the negotiable receipts.

"The trust company, therefore, on September 7, 1892, obtained a valid lien **on 500 bales of Lipman & Company's burlap then stored in the warehouse. Thereupon the warehouse company became its bailee, and held the bales for it. (Gigson vs. Stevens,** 8 How. 384). Whenever thereafter Lipman & Company asked to substitute other similar goods of their own for those originally delivered as collateral, the surrender of an equal quantity of the original security of equal value would be a valuable consideration for the giving of the new security. The pledgee as to the latter would be a holder for value, and the exchange would have no effect upon the rights of the

pledgee as founded upon the original contract. (Colebrooke, Col., Sec. 15; **Clark vs. Iselin,** 21 Wall. 360.")

Blydenstein vs. N. Y. Sec. and T. Co., 67 Fed. 479, 480.

III.

As the trustee in this case has not appealed, and as he stands in the position of the bankrupt, we shall not devote any time to the discussion of his case.

Gage Lumber Co. vs. McEldowney, 207 F. 261.

"It would be most inequitable that the bankrupt or his trustee should escape from the performance of his obligation for the benefit of anyone except a bona fide purchaser for value or creditors protected by statute."

In re Cattus, 183 F. 735.

Instead of fighting the pledge of the Commercial National Bank, it was his duty to protect their pledge.

The courts recognize and enforce contracts reasonably and honestly made, as the parties intended to carry them out—in good faith.

"A court of bankruptcy views transactions of this kind upon the broadest equitable principles, and does not hesitate to effectuate the actual intent of transactions honestly had with a bankrupt without much restraint as to formality or procedure. **(Hurley vs. Atchison, Topeka and Santa Fe Ry., supra,** 213 U. S. 132 [29 Sup. Ct. 466, 53 L. Ed. 729], approving the language of Circuit Judge Putnam). When we regard the substance and effect of the present transactions apart from their form, it is reasonably plain that the Clanfield Company would not be heard to

say that the Gage Company did not, through its advances and the other's actual production and stacking of the lumber, acquire an interest—certainly an equitable interest—in this lumber. The essence of the purchaser's right was the fact, constantly to be remembered, that each advance was made for the purpose of having a particular thing produced. The last analysis of such a transaction is that, when the lumber was produced and placed on sticks, it was in effect appropriated toward the payment of the loan, as required and promised under the contract."

Gage Lumber Co. vs. McEldowney, 207 F. 257.

IV.

Great stress was laid by the Judge of the District Court on an extract from Williston on Sales. The extract cited in the opinion reads as follows:

> "As a general proposition it needs no argument to show that a bailor having no title to goods cannot, by depositing them with the warehouseman, or carrier, and receiving a document of title in return, whatever its form, give a good title to the purchaser of the document, however innocent the purchaser may be."

This extract was quoted in our adversaries' brief. But had the Court and our adversaries read the VERY NEXT SENTENCE OF THAT PARAGRAPH THEY WOULD HAVE SEEN THIS:

> *"The only qualification to this principle is that if the depositor of the goods, though he had no title, had ability or capacity to transfer a title to a purchaser for value, either by virtue of actual authority or because the owner had allowed a situation to arise which would estop him from asserting his title to the*

goods, the same reason should protect a purchaser of the document of title that would protect a purchaser of the goods."

Williston on Sales, pages 722, 723.

To sustain this point, Williston on Sales cites the case of **Pollard vs. Reardon,** 65 Fed. 852. An excerpt from this case reads as follows:

"On the whole, the legal principles applicable seem clear, and, if the case involves any obscurity, we think it is because those principles have not been freely stated or applied. In the development of commerce and commercial credits the bill of lading has come to represent the property, but with greater facility of negotiation, transfer and delivery than the property itself. It is a negotiable instrument, even though not in the same sense as promissory notes or bills of exchange. It carries on its face, in the words 'and assigns,' an authority to **dispose of it** and, as we have seen, a like authority when indorsed in blank, by which the person who voluntarily puts it out, **or permits it to be put out, ought to be estopped.** And it has become so universal and necessary a factor in mercantile credits that the law should make good what the bill of lading thus holds out. There is every reason found in the law of equitable estoppel and in sound public policy for holding, and no injustice is involved in holding, that, if one or two must suffer, it should be **he who voluntarily puts out of his hands an assignable bill of lading, rather than he who innocently advances value thereon.**

"When Pollard, Pettus & Co. accepted from Mansfield a bill of sale for the hides in question, they knew that in the regular course of business a clean bill of lading for them would issue to him, clothing him with

the customary indicia of absolute ownership. **They took the chances arising from this. They must stand as thought they assented to it, and they can claim no right against anyone who dealt with Mansfield in good faith relying upon it.** Their presumed assent to the issue of the bill of lading to Mansfield is emphasized by their laches in applying for it. Whatever may be the nature of their right, it cannot prevail against Reardon's title under the bill of lading."

Pollard vs. Reardon, 65 Fed. 852.

We are indirectly indebted to Prof. Williston for the case of **Baker vs. Brown,** 100 N. E. 1026 (214 Mass. 196), quoted in a previous part of this brief.

V.

The Louisiana law, outside of the uniform laws above mentioned, recognizes the absolute pledge of warehouse receipts by delivery only. As is said in the last clause of C. C. 3158:

"All pledges may be made by private writing of any kind if only the intention to pledge be shown in writing, but all pledges must be accompanied by actual delivery. **The delivery of property on deposit in a warehouse, cotton press or on storage with a third person,** or represented by a bill of lading, shall pass to the pledgee by **the mere delivery of the warehouse receipt, cotton press receipt,** bill of lading or storage receipt, showing the number, quantity or weight of the things pledged; and such pledge so made, without further formalities, shall be valid as well against third persons as against the pledgor thereof, if made in good faith. Such receipts shall be valid and binding in the order of time in which they are issued for the number, quantity or weight

of the things pledged, if there should not be enough to meet all receipts so issued."

The jurisprudence of Louisiana long before the Warehouse Receipt Law recognized that the pledge of securities carried with it title.

> **Building Ass. vs. Ferguson,** 29 An. 548; **Lafayette vs. Bruff,** 33 An. 624; **Chaffe vs. Dubose,** 36 An. 257.

As Judge Breaux says in **Fidelity and Deposit Co. vs. Johnston:**

> "The Civil Code treats the rights of the pledgee in the property pledged as **being in the nature of ownership** to the amount of the pledge. It may have to yield to superior claims against it; the right none the less is very similar to rights of **an owner.** (Civil Code, Arts. 3157, 3170, 3171).
>
> "From this point of view this Court has repeatedly held that the holder of the pledge has the right to sue in his own name.
>
> "The right of the pledgee to sue in his name was recognized in **Building Association vs. Ferguson,** 29 An. 548. It was recognized in the case of **Lafayette vs. Bruff,** 33 An. 624, and reaffirmed in **Chaffe vs. Dubose,** 36 La. An. 257."
>
> **Fidelity and Deposit Co. vs. Johnston,** 117 La. 889.

In **Kyle vs. Sigur,** 121 La. 889, pledge is defined as "a qualified ownership."

In their references to the Louisiana law in the lower courts our adversaries are unfortunate in citing **Honold vs. Meyer.** While Article 3145 of the Code says one may pledge property of another, provided it be with the express or tacit

consent of the owner, this has been interpreted by the courts of Louisiana to show that a pledge of property made by an agent having power to transfer, whether honestly or dishonestly made, is valid and binding.

In the case of **Honold vs. Meyer,** 36 An. 584, referred to by them in the lower court, the Court says:

> "The pledge was effected by means of a transfer to defendants on the books of the company made by virtue of a power of attorney, and a certificate was issued in the name of defendants. Defendants had no knowledge of the fact that the stock belonged to plaintiff. They accepted the transfer on the faith of the certificate issued in their own name. *Held,* that they were not bound to inquire into plaintiffs' title and the latter cannot recover."
>
> **Honold vs. Meyer,** 36 An. 584.

And:

> "Such, however, was not the case. Meyer, Weis & Co. did not acquire the stock, and the evidence of their title thereto, solely and directly by the act of this agent, and immediately from him. There was another agent or intermediary in the affair, forming an important factor therein and whose participation in the matter exercises a controlling influence upon the legal result and the conclusion to which we have arrived.
>
> "We refer to the company itself. It was the depositary, custodian and guardian of the plaintiff's stock, and as such an agent of the plaintiff, without whose consent and co-operation the transfer in question could not have been effected.
>
> "To the company the agent and son of the plaintiff **submitted a power of attorney from his principal,**

giving him full authority to sell and make a transfer of the stock. On the faith of that authority the transfer was permitted and recognized as valid by the company, and on the faith of the transfer thus made by due authority the company, as in duty bound, issued a certificate for the stock to the transferees, Meyer, Weis & Co., thereby and therein declaring them to be the owners of the stock. No possible blame could attach to the company for its acts in the premises. The plaintiff's counsel admits this, when, in their brief, they say (quoting):

" 'Upon the simple inspection of his power of attorney, the company was bound to permit the transfer on its books, and as a consequence thereof to issue a certificate to the transferee.'

"How then can we impute any fault or negligence to the defendants for acting in the faith of a transfer made by due authority, and of a certificate issued in compliance with a legal requirement, recognizing the transfer as made by competent authority and as conveying the ownership of the stock to the transferees? **We do not think they were in fault, and they were justified in believing they were the lawful holders** of the stock and acting on that belief. The fault is to be found for the loss incurred by plaintiff, not in the company, not in Meyer, Weis & Co., but in the agent selected by her and charged with the responsible trust of disposing of the property. In truth, the whole question would seem to resolve itself into this: whether the loss should fall on Meyer, Weis & Co., innocent parties in the transaction, as we have shown, and who gave their money or credit for the stock, rather than on the plaintiff, when it is evident that the loss was caused by the act of an unfaithful agent,

chosen by her, and who used the power with which he was entrusted for his own personal gain. We think there could be but one answer to this, an answer supported by the highest legal authority and elementary in principle. Thus we read in Smith's Mercantile Law, page 158:

" **'He who accredits another by employing him, must abide by effects of that credit, and will be bound by contracts made with innocent third persons in the seeming course of that employment, and on the faith of that credit, whether the employer intended to authorize him or not, since where one of two innocent persons must suffer by fraud of a third, he who enabled that third person to commit the fraud should be the sufferer.'**

"And we are further supported in the conclusion we have reached touching the rights of the defendants under the transfer and the certificate for the stock issued by the company after such transfer, by several adjudications in cases bearing a striking analogy to the instant one.

"Thus, Chief Justice Taney, in deciding the case of **Lowery vs. Bank of Baltimore,** says:

" 'The party to whom it is transferred rarely, if ever, sees the entry, and relies altogether upon the certificate of the proper officer of the bank, stating that he is entitled to so many shares; that is to say, so many shares have been transferred to him by one who had a lawful right to make the transfer.'

"He then refers to the case of **Davis vs. Bank of England,** above cited, and goes on to say:

" 'And as it (the transferee bank of the stock) paid a valuable consideration, **and had no notice,**

actual or constructive, of any violation of the trust, upon which the transfer could be imperiled in equity, it had a right to sell the stock for the payment of the note for which it was pledged and to make the purchasers a valid title. A different rule would render the right of every purchaser of stock in a bank insecure or liable to doubt, and greatly impair its value, and would, moreover, seriously disturb the usages of trade and the established order of business in relation to this subject, in a manner highly injurious to the community; for purchasers always rely on the certificate of the bank in which it is held as conclusive evidence of the ownership. Most commonly the purchase is made through the broker, and the buyer does not know who is the seller and who makes the transfer; the certificate of the bank tells him that he is entitled to so many shares, and he pays his money upon receiving the certificate, without further inquiry. It would be unjust and inequitable to charge the stock in his hands with any equitable incumbrance or trust, however created, which was not known to him at the time he paid his money.'

"(See, also, **Davis vs. Bank of England,** 2 Bingham, 393; 9th Eng. Com. Law. 451; **Holbrook vs. Zinc Co.,** 57 N. Y. 616; **Salisbury Mills vs. Townsend,** 109 Mass. 115; **National Bank vs. Watsontown Bank,** 105 U. S. [15 Otto] 217; 26 L. Ed. 1039.)"

Honold vs. Meyer, 36 An. 588, 589.

This principle was also laid down in the case of **Giovanovich vs. Citizens' Bank,** 26 An. 17, and **Saloy vs. Hibernia Bank,** 39 An. 90.

Under the law of Louisiana even stolen property can be acquired by a bona fide purchaser for value if acquired from a person in the habit of selling such things.

C. C. 3507 (3473):

> "If, however, the possessor of a thing stolen or lost bought it at public auction, **or from a person in the habit of selling such things,** the owner of the thing cannot obtain restitution of it without returning to the purchaser the price it cost him."
>
> **Little vs. Managers of Citizens Bank,** 2 A. 978.

VI.

It is urged in this case that the bankruptcy court being an equity court must recognize the claim of the Canal-Louisiana Bank as the prior equity under the maxim:

"Where there are equal equities, the first in order of time shall prevail."

Of course, the equities must be **equal,** and such is not the case here.

Pomeroy says, speaking of the maxim:

> "I think the meaning is this: that in a contest between persons having only equitable interests, priority in time is the **ground of preference last resorted to**—i. e., that a court of equity will not prefer the one to the other on the mere ground of priority of time **until it finds, upon an examination of their relative merits, that there is no other sufficient ground of preference between them, or, in other words, that their equities are in all respects equal; and that, if one has on other grounds a better equity than the other, priority of time is immaterial."** (Our black-letter).
>
> Pomeroy (3rd Ed.), Vol. I, pp. 690, 691, Sec. 414.

Certainly, the Canal-Louisiana Bank put it in the power of Dreuil & Company to pledge the cotton as they did pledge it.

The bill of lading was negotiable, as was the warehouse receipt; and, therefore, title absolutely vested in the subsequent pledgee.

But, in order to discuss the case from an equitable standpoint, let us suppose the bill of lading was not negotiable.

Pomeroy says, in this case:

> " * * * The owner of certain kinds of things in action not technically negotiable, but which, in the course of business customs, have acquired a semi-negotiable character in fact, may assign or part with them for a special purpose, and at the same time may **clothe the assignee or person to whom they have been delivered with such apparent *indicia* of title, and instruments of complete ownership over them, and power to dispose of them, as to estop himself from setting up against a second assignee, to whom the securities have been transferred without notice and for value, the fact that the title of the first assignee or holder was not perfect and absolute.** The ordinary and most important application of this rule is confined to the customary mode of dealing with certificates of stock. If the owner of stock certificates assigns them as collateral security, **or pledges them, or puts them into the hands of another for any purpose, and accompanies the delivery by a blank assignment and power of attorney to transfer the same in the usual form, signed by himself, and this assignee or pledgee wrongfully transfers to an innocent purchaser for value in the regular course of business, such original owner is estopped from asserting, as against this purchaser in good faith,** his own higher title and the want of actual title and authority in his own immediate assignee or bailee."
>
> Pomeroy's Equity Jurisprudence, Vol. II, Sec. 710, p. 1243.

In this case we cannot concede that the Canal-Louisiana Bank had any sort of a title as that was divested by the indorsement of the bill of lading to Dreuil & Co.

But if it had a higher title in equity it has been lost by handing Dreuil the *indicia* of ownership.

> "A person who puts it in the power of another to deceive and raise money must take the consequences. **He cannot afterwards rely** on a particular or different equity."
>
> **Neslin vs. Wells,** 104 U. S. 439.

The Court says further in that case:

> "The only circumstance on which the appellant can rest the claim of his mortgage to a preference, is that it is prior in date. But the maxim quoted in support of this claim—*qui prior est tempore potior est jure*—only applies in cases in which equities are equal. That we have already decided is not this case. Here equity cannot be satisfied otherwise than by subjecting the appellant to the loss, which has to be suffered by one of the two **solely in consequence of his fault."**
>
> Id., 441.
>
> **Bacon vs. Harris,** 62 F. 104.

The attitude of this Court as a court of equity towards bona fide purchasers for value without notice is well stated by Mr. Justice Baldwin, in **Boone vs. Chiles,** in the following language:

> "This leads to the reason for protecting an innocent purchaser, holding the legal title, against one who has the prior equity; a court of equity can act only in the conscience of a party; if he has done nothing that taints it, no demand can attach upon it, so as to give any jurisdiction. (Sugden on Vend. 722).

Strong as a plaintiff's equity may be, it **can in no case be stronger than that of a purchaser, who has put himself in peril by purchasing a title, and paying a valuable consideration, without notice of any defect in it, or adverse claim to it; and when, in addition, he shows a legal title from one seized and possessed of the property purchased, he has a right to demand protection and relief** (9 Ves. 30-4), which a court of equity imparts liberally. **Such suitors are its most special favorites.** It will not inquire how he may have obtained a statute, mortgage, incumbrance or even a satisfied legal term, by which he can defend himself at law, if outstanding; equity will not aid his adversary in taking from him the *tabula in naufragio*, if acquired before a decree. (Shower, P. C. 69; 4 B. P. C. 328; 1 D. & E. 767; P. C. 65; 7 V. 576; 10 V. 268; 70; 11 V. 619; 2 Ch. Cas. 135, 6; 2 Vin. 161; 1 Vent. 198). Relief will not be granted against him in favor of the widow or orphan. (P. C. 249; 2 V. Jr. 457, 8; 5 B. P. C. 292). Nor shall the heir see the title papers. (18 Vin. 115; 1 Ch. Cas. 34, 69; 2 Freem. 24, 43, 175). It is a bar to a bill to perpetuate testimony, or for discovery (1 Harrison's Ch. 261, 3; Sugden, 723, 4; 1 Virnon, 354), and goes to the jurisdiction of the Court over him; his conscience being clear, any adversary must be left to his remedy at law. (2 V. Jr. 457; 3 V. Jr. 170, 183; 9 V. 30; 18 J. R. 532; 7 Cr. 18.)"

Boone vs. Chiles, 10 Peters, 210, 211.

"Even between successive pledgees without any communication with each other, that one who lawfully obtains possession at the time of the pledge or subsequently is entitled to be preferred according to the maxims. *'In pari causa possessor potior haberi*

debet' and *'In equali jure melior est condition possidentis.'* (Story on Bailments, Secs. 312, 313.)"

Parshall vs. Eggert, 54 N. Y. 24.

We also wish to cite the case of Holly vs. Missionary Society on this point. In that case Thompson was executor of a will. The Missionary Society was legatee. Thompson, the executor, was also attorney for Holly. He induced Holly to give him a check to pay for a certain piece of real estate, and Thompson took this check, deposited it and appropriated the money to pay the legacy of the Missionary Society. Your Honors held in that case that when the Court of Equity is called upon to decide which of two innocent parties is to suffer the loss, that Court will not transfer a loss which has already fallen upon one innocent party to another party equally innocent.

In the latter part of the decision the Court says:

"Let it be conceded that he was not in the circumstances estopped from following his money into the hands of the Missionary Society by having entered an attachment against Thompson for a fraudulent conversion of his money; let it also be conceded that by trusting his money with Thompson, who had theretofore been his attorney, and whose standing in the community was good, he was not guilty of conduct so reckless and negligent as to, of itself, deprive him of a remedy, yet his case fails in the essential particular that he has not shown that the Missionary Society, in receiving from Thompson, executor, the money due from the estate of Rev. Dr. Saul, and in applying it in accordance with the appointments of the will, acted with any notice or knowledge, actual or imputable, that Thompson was misapplying funds entrusted to him by a third person with whom the society had no relations whatever. **As against the Mes-**

> **sionary Society, Holly, in the circumstances disclosed, has no equities; and even if it could be said that the equities were equal, a court of equity will not transfer a loss that has already fallen upon one innocent party to another party equally innocent."**

There is still another equitable principle governing our case. It is covered by the maxim, "Where there is equal equity the law must prevail."

Pomeroy says, concerning this maxim:

> "Sec. 417. Its Meaning and Effects.—The meaning of the maxim is: if two persons have equitable claims upon or interest in the same subject matter, or, in other words, if each is equally entitled to the protection and aid of a Court of Equity with respect of his equitable interest, and one of them, in addition to his equity, also obtains the legal estate in the subject matter, then he who thus has the legal estate will prevail. This precedence of the legal estate might be worked out by the Court of Equity refusing to interfere at all, and thereby leaving the parties to conduct their controversy in a Court of Law, where of course, the legal estate alone would be recognized. One of the most frequent and important consequences and applications of this principle is the doctrine that when a purchaser of property for a valuable consideration, and without notice of a prior equitable right to or interest in the same subject matter, obtains the legal estate in addition to his equitable claim, he becomes, in general, entitled to a priority both in equity and at law."
>
> Pomeroy, Vol. I, pages 694-695, Sec. 417.

Lord Campbell lays down the same principle in the case of **Philips vs. Philips** in the following language:

"The second class of cases is the ordinary one of several purchasers or incumbrancers each claiming in equity and one who is later and last in time succeeds in obtaining an outstanding legal estate not held upon existing trust or a judgment, or any other legal advantage, the possession of which may be a protection to himself or an embarrassment to other claimants. He will not be deprived of this advantage by a Court of Equity. To a bill filed against him for this purpose by a prior purchaser or incumbrancer, the defendant may maintain the plea of purchase for valuable consideration without notice; for the principle is, that a Court of Equity **will not disarm a purchaser, that is, will not take from him the shield of any legal advantage.** This is the common doctrine of the *tabula in naufragio.*"

Fisher and Jones, 4 De Gex, page 217.

VII.

When the Canal-Louisiana Bank entrusted Dreuil & Co. with the bill of lading on the trust receipt they did so for the purpose of having Dreuil & Co. dispose of that cotton as they saw fit and return them the proceeds.

So long as the cotton was in the possession of Dreuil & Co. the Canal-Louisiana Bank had a lien for that cotton under well-known authorities, many of which are cited in this brief.

But just as soon as Dreuil & Co. parted with the title to the cotton entrusted to them under the bill of lading, **the only right that the Canal-Louisiana Bank had left was a claim against Dreuil & Co. for the proceeds of that cotton.** They had invested them with all *indicia* of authority to own and dispose of the property covered by the bill of lading,

and when Dreuil & Co. procured warehouse receipts under and by authority of the indorsement of the bill of lading and pledged these warehouse receipts to the Commercial National Bank of New Orleans, the Commercial National Bank had title as pledgee to the warehouse receipts.

When the Commercial National Bank allowed Dreuil & Co. the possession of the cotton under trust receipt issued to them, that bank put it into the power and control of Dreuil & Co. to sell or dispose of the cotton to anyone they saw fit. But before Dreuil & Co. could dispose of the property which belonged to the Commercial National Bank they went into bankruptcy **and the cotton was found in their possession.**

It is true that the two warehouse receipts belonging to the Commercial National Bank had been split up into other warehouse receipts, but there is no question in this record anywhere but that the identity of the cotton is the same and unchanged. The property is, therefore, the property of and subject to the pledge of the Commercial National Bank.

First—Because the Canal-Louisiana Bank had placed it in the power of Dreuil & Co. to part with their title.

Second—Because Dreuil & Co. had parted with their title; and,

Third—Because the Commercial National Bank had acquired the title.

The fact that the property was out on trust receipt, under the numerous decisions of this Court and other courts in the Union, does not in the least affect the ownership of the Commercial National Bank.

Indeed, the only rights urged by the Canal-Louisiana Bank are based on their trust receipt.

How, then, can it be said that by the fortuitous circumstances of the bankruptcy of Dreuil & Co. the title of the Canal Bank has been re-vested in the Canal Bank and at the same time the title of the Commercial Bank of New Orleans has been divested?

Respectfully submitted,

By EDWIN T. MERRICK,
Of Counsel.

November 3, 1915.

Supreme Court of the United States

October Term, 1914.

No. 137.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS,

Appellant,

vs.

CANAL-LOUISIANA BANK AND TRUST COMPANY and JONAS HILLER, TRUSTEE OF THE ESTATE OF DREUIL AND COMPANY, BANKRUPTS,

Appellees.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of Appellee, the Canal-Louisiana Bank and Trust Company.

HENRY MOONEY,

Counsel for Canal-Louisiana Bank and Trust Company, Appellee.

R. P. Andrews Ptg. Co., Baltimore Printers, 516 Nasburn St., N. O.

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Supreme Court of the United States

October Term, 1915.

No. 117.

COMMERCIAL NATIONAL BANK OF NEW ORLEANS,

Appellant,

versus

CANAL-LOUISIANA BANK AND TRUST COMPANY and JONAS HILLER, TRUSTEE OF THE ESTATE OF DREUIL AND COMPANY, BANKRUPTS,

Appellees.

Appeal From the United States Circuit Court of Appeals for the Fifth Circuit.

Brief on Behalf of Appellee, the Canal-Louisiana Bank and Trust Company.

STATEMENT OF THE CASE.

Dreuil and Company were cotton merchants in New Orleans, Louisiana. A large part of their business con-

sisted of exporting cotton. In pursuit thereof it was customary for them to borrow money from banks to secure repayment of which they pledged cotton evidenced by negotiable bills of lading or warehouse receipts.

On December 9, 1912, Dreuil and Company pledged certain cotton described in the record to the Canal-Louisiana Bank and Trust Company to secure a loan made to them by the said bank. The pledge was perfected by the delivery to the Canal-Louisiana Bank & Trust Company of certain negotiable inland bills of lading also fully described in the record.

On December 13, 1912, the bills of lading thus pledged by Dreuil and Company were withdrawn by them from the Canal-Louisiana Bank and Trust Company, upon delivery of a trust receipt therefor to the bank.

Druiel and Company having thus obtained the bills of lading surrendered them to and secured the cotton from the railroad company and after "splitting" and remarking it, stored it in the Planter's Press and obtained two negotiable warehouse receipts therefor.

Instead of delivering these warehouse receipts to the Canal-Louisiana Bank and Trust Company, as they were required to do under and by the terms of the Trust receipt, Dreuil and Company, on December 17th, 1912, pledged the two warehouse receipts to the Commercial National Bank.

On December 20, 1912, Dreuil and Company withdrew one of said warehouse receipts from the Commercial National Bank on a trust receipt identical in terms with the one previously given the Canal-Louisiana Bank & Trust Company, and on December 28th, 1912, Dreuil and Com-

pany withdrew the second warehouse receipt from the Commercial National Bank on a similar trust receipt.

On December 28, 1912, **both warehouse receipts were surrendered by Dreuil and Company to the warehouse and cancelled, and the cotton delivered to Dreuil and Company.**

On December 31, 1912, Dreuil and Company were adjudicated bankrupts and temporary receivers were appointed who found the cotton in question, to the value of over three thousand ($3,000.00) dollars, in the possession of the bankrupts.

Both banks acted in good faith and in accordance with recognized custom.

The Commercial National Bank sued to obtain possession of the cotton, and the Canal-Louisiana Bank and Trust Company defended an reconvened, asserting its title as pledgee and praying that its superior title be recognized.

The trial Court recognized the rights of the Canal-Louisiana Bank & Trust Company and directed that it be paid out of the proceeds of the particular cotton by preference and priority over Commercial National Bank. On appeal, this judgment was affirmed by the Circuit Court of Appeals for the Fifth Circuit **(211 Fed. Rep., 337).**

The trustee in bankruptcy has acquiesced in the judgment.

The case hinges upon the issue presented by the fourth ground in the assignment of errors, (Tr., p. 111) viz:

> 'That the Court erred in not holding that Dreuil and Company had sufficient title to the cotton received from the Canal-Louisiana Bank and Trust

Company under a trust receipt reading in a substantial part as follows, to-wit:

"'Received of the Canal-Louisiana Bank and Trust Company the bills of lading or other documents or securities as enumerated below, held by the said bank, as collateral pledged to secure advances made to the undersigned, and in consideration thereof, the undersigned hereby agrees to pay over to the said bank or its assignees, and to specifically apply against the very same advances, the proceeds of the sale of the property mentioned in the said documents; or to deliver to the said bank or its assignees the shipping documents or warehouse receipts, representing the undermentioned goods, within one day from the receipt thereof, this delivery being temporarily made the undersigned for convenience only, without novation of the original debt, or giving the undersigned any title thereto, except as trustee for the said bank, and except to receive the avails thereof, or the documents thereof for the account of said bank.'

"To make a valid pledge or transfer under the laws of Louisiana, or under general law, to the Commercial National Bank acting in good faith, for a valid consideration and at a time not suspicious, and did make such a valid pledge or transfer to said bank."

The record shows that all of the trust receipts referred to in this suit are on a "form adopted by the New Orleans Clearing House Association" and have printed upon them in full, Act 120 of 1910, of the laws of Louisiana, which provides that any person

"allowed to withdraw collateral pledged by him on such a trust receipt and who sells or otherwise

> disposes of same for any other purpose than that of paying the indebtedness for which said collateral was pledged, or who fails to return said collateral on demand, or in lieu thereof to make such cash payments for the value thereof, is deemed guilty of a felony, * * * and, on conviction, shall be imprisoned at hard labor for not less than two years, and not exceeding ten years."

Other pertinent statutes on this subject are Articles 3142 and 3173 of the Civil Code of Louisiana, the first of which reads:

> "A debtor may give in pledge whatever belongs to him.
>
> "But in regard to those things, in which he has an ownership which may be divested or which is subject to incumbrance, he cannot confer on the creditor by the pledge any further right than he had himself."

And the second:

> "The debtor who takes away a pledge without the creditor's consent, commits a sort of theft."

ARGUMENT.

The appellee, Canal-Louisiana Bank & Trust Company, bases its claim as pledgee and its right to be paid by preference out of the proceeds of the cotton, upon the following grounds:

First: That by the very terms of the trust receipt the firm of Dreuil and Company was constituted the special

bailee of the Canal-Louisiana Bank and Trust Company and was specifically required to surrender to said bank either the proceeds derived from the sale of the said cotton, or the warehouse receipts or bills of lading covering same. Hence, Dreuil and Company were without any right or authority to execute the pledge to the Commercial National Bank, and such pledge was invalid and of no effect against the bailor without fault and in good faith.

Second: That inasmuch as both banks had surrendered their respective muniments of title—the Canal-Louisiana Bank and Trust Company its negotiable bill of lading, and the Commercial National Bank its negotiable warehouse receipt—both banks stood upon their trust receipts as evidence of the pledge. Under such instruments their titles are equal and the more ancient prevails.

FIRST POINT.

By reference to the transcript of record, it will be seen that the **District Court sustained the claim of the Appellee upon tht first ground,** giving the following reasons which are amply supported by the authorities quoted:

> "On this question, it appears from the report of the Commissioners on Uniform State Laws of January 1, 1910, that the Uniform Warehouse Receipt Act was first considered by them in national conference in 1904, and Professor Samuel Williston and Mr. Barry Mowhun were commissioned to draft such an act. The draft was prepared by the

gentlemen named, and after due consideration and some changes, it was approved by the commissioners in 1906 and recommended to the legislatures of the several States for passage. The law has been adopted in over twenty States, but apparently no Court of last resort has had occasion to construe the sections relied upon by the Commercial National Bank. At least, no cases are cited by counsel and I have not been able to find any.

"It is apparent, however, that the purpose of the law is to facilitate legitimate business, and not to abrogate or change fundamental principles. Both at common law and under the Civil Code of Louisiana, Articles 2452 and 3142, a bailee or trespasser could not by selling or pledging the property convey a better title than he possessed himself, even to an innocent third person; and neither the intent nor the letter of the uniform statute will support the proposition that he could do so indirectly by storing the goods and negotiating the receipt. The sections of the law relied upon by the Comemrcial National Bank material to the issue are as follows:

"Section 40:

" 'A negotiable receipt may be negotiated:

" '(a) By the owner thereof; or

" '(b) By any person to whom the possession or custody of the receipt has been entrusted by the owner, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if, at the time of such entrusting, the receipt is in such form it may be negotiated by delivery.'

"Section 41:

" 'A person to whom a negotiable receipt has been duly negotiated acquires thereby:

" '(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value.'

"Section 47:

" 'The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation or by the fact that the owner of the receipt was induced by fraud, mistake or duress to intrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.'

"The Commissioners on Uniform State Laws in their report of January 1, 1910, referring to Sections 40 and 41, had this to say:

" 'This section and the next are of fundamental importance to the mercantile community. They state familiar law in regard to bills and notes, and there is authority for them in the statutes making warehouse receipts and bills of lading negotiable and in well recognized mercantile custom. It will be noticed that one who takes by trespass or a finder is not included within the description of those who may negotiate.'

"Professor Williston, with reference to the Uniform Act, states the rule as follows:

" 'As a general proposition it needs no argument to show that a bailor, having no title to goods, cannot by depositing them with the warehouseman or

carrier, and receiving a document of title in return, whatever its form, give a good title to a purchaser of the document, however innocent the purchaser may be. **Williston on Sales, Paragraph 421.'**

"Moreover, the Uniform Act is but a step in the development of the law, and decisions relating to prior and similar acts are safe guides to its construction. In **Commercial Bank of Selma v. Hurt, 99 Ala., 130,** a case almost identical with the one at bar, the Court, in upholding the title of the owner of the goods, in the course of its opinion took occasion to say:

" 'We cannot conceive that it could have been within the contemplation of the Legislature that the provisions of the statute would enable a thief, by depositing the stolen property with a warehouseman, and obtaining a receipt for it in due form, to confer upon an innocent purchaser for value and in good faith a claim to the property which would prevail against that of the true owner.'

"And it is doubtful that Act 221 of 1908 changed the law of Louisiana materially. Section 7 of Act 156 of 1888, in force up to that time, provided as follows:

" 'That the receipts issued against property stored in public warehouses, as herein provided for, shall be negotiable and transferable by indorsement in blank or by special indorsement and delivery in the same manner and to the same extext as bills of exchange and promissory notes now are, without other formality, and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and priv-

ileges of the public warehouseman for storage or other warehouse charges.'

"In **Holton v. Hubbard, 49 A., 715,** a case arising under this act, the Supreme Court of Louisiana reviewed the statutes and the jurisprudence and held that when property was shipped to a factor for the purpose of sale only, and was stored by him, and the receipt pledged to secure the factor's debt, the owner was not precluded from claiming the property. That Arts. 2452 and 3142 of the Civil Code which strike with nullity the sale or pledge of the property of another, were not repealed by the act; that if it could be held that the act intended to repeal these articles of the Code it would be open to the objection of unconstitutionality because no such purpose was stated in its title. Mr. Justice Miller, in denying a rehearing, summed up the Court's conclusions as follows:

" 'With the most careful consideration, we are utterly unable to interpret legislative acts designed to assist legitimate commercial necessities so as to overthrow long-settled principles and sanction what the law deems fraud.'"

"See, also, **Frantz v. Winehill, 124 La., 680.**

"The Canal Bank & Trust Company was constructively the owner of the cotton by virtue of its pledge and as holder of the bills of lading. When it surrendered the temporary custody of the bills of lading to the bankrupts they became its bailees, and their authority was restricted and governed by the trust receipts, and did not include the right to pledge the cotton.

"**R. S. of Louisiana, 2482.**

"**Lallande v. His Creditors, 42 A., 705.**

"**Bank v. Meyer, 43 A., 1.**

"**Insurance Co. v. Kiger, 103 U. S., 352.**

"**Shaw v. Railroad Company, 101 U. S., 562.**

"The Commercial National Bank also invokes the doctrine that, where one of two innocent parties must suffer, he who put it in the power of the wrongdoer to commit the wrong must bear the burden. This doctrine, of course, could have no application unless the Canal Louisiana Bank & Trust Company was guilty of negligence.

"It would be greatly inconvenient, if not impracticable, to conduct the cotton business unless cotton merchants were entrusted with the temporary possessions of negotiable bills of lading and warehouse receipts, for the purpose of having the cotton sampled and classed and marked, weighed and shipped when sold. It is the well recognized custom in New Orleans to do so. Therefore, the Canal-Louisiana Bank & Trust Company was guilty of no negligence in surrendering the bills of lading on trust receipts, and the record does not disclose that they did or said anything else that would estop them.

"Civil Code Article 3142, 3145, 3146.

"Clark v. Iselen, 21 Wall., 360.

"If the cotton had been stored by the bankrupts at a time the unincumbered ownership was in them and the receipts had been pledged to the Canal Bank & Trust Company, and subsequently withdrawn on trust receipts and then fraudulently pledged to the Commercial National Bank, the situation would be different and no doubt the provisions of the act would apply, and decisions dealing with negotiable securities and bills and notes would have a bearing. As it is, in the light of the above quoted authorities, the conclusion is irresistible that the Commercial National Bank takes nothing by the act and the title of the Canal-Louisiana Bank & Trust Company is superior."

It must also be noted that by the law of Louisiana, **TITLE** to the cotton passed by the delivery to the Canal-Louisiana Bank & Trust Company of the bill of lading, and was thereafter vested in said bank.

The Supreme Court of Louisiana recognized this to be the law in the case of **Fidelity & Deposit Company v. Johnson, 117 La., 889,** where the Court said:

> "The Civil Code treats the rights of the pledgee in the property pledged **as being in the nature of ownership** to the amount of the pledge. It may have to yield to superior claims against it; the right, none the less, is very similar to the rights of an owner. **Civil Code, Articles 3157, 3170, 3171.**
>
> "From this point of view this Court had repeatedly held that the holder of a pledge has the right to sue in his own name."
>
> "The right of the pledgee to sue in his own name was recognized in **Bldg. Ass'n. v. Ferguson, 29 An., 548;** was recognized in the case of **Lafayette v. Bruff, 33 An., 624;** and was re-affirmed in **Chaffe v. Dubose, 36 La. An., 257.**"

The nature of a pledgee's title is further illustrated by Article 3173 of the Civil Code, which reads:

> "The debtor who takes away a pledge without the consent of the creditor commits a sort of theft."

Therefore, it must be conceded that when Dreuil and Company, in violation of the terms of the trust receipt by which said bankrupt firm was constituted the special bailee of the Canal-Louisiana Bank and Trust Company, placed the cotton in a warehouse and misapplied the ware-

house receipt covering it, they violated not only the Articles of the Civil Code which declare such an act to be a "sort of theft" but also the penal laws of the State of Louisiana which denounce "the fraudulent disposition of property withdrawn on trust receipts as a felony."

The sections of the negotiable warehouse receipts act which the learned Judge has quoted refer to the **validity of the negotiation,** but there is a wide difference between title to the bill of lading or warehouse receipt, and title to the property covered thereby. Thus it may be possible that the Commercial National Bank might have valid title to a warehouse receipt and yet acquire no title to the cotton described therein, because Section 41 of the act provided that:

> "The person to whom a negotiable receipt has been duly negotiated, acquires thereby such title to **the goods** as the person negotiating the receipt to him had or had ability to confer."

Now in the face of Article 3142 of the Civil Code of Louisiana which declares that:

> "A person may pledge whatever belongs to him; but with regard to those things in which he has an ownership which may be divested or which is subject to incumbrances, he cannot confer on the creditor by the pledge, any further right than he himself has."

And of Article 3173, quoted supra, which says:

> "The debtor who takes away the pledge without the creditor's consent commits a sort of theft,"

it must clearly appear that Dreuil and Company could give to the Commercial National Bank by pledge of the

warehouse receipt only such title as Dreuil and Company had therein subject to all of the rights of the Canal-Louisiana Bank and Trust Company.

That there may be a valid negotiation of an invalid bill is law which has received legislative recognition and sanction in a number of ways, for instance and by way of illustration Section 41 of the Uniform Negotiable Instruments Law, dealing with the effect of endorsement by an infant or corporation reads:

> "The endorsement or assignment of an instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon."

From which provision it appears that the infant, or corporation without authority may endorse for the purpose of a valid negotiation, but are exempt from the warranties by which other general endorsers are bound, namely:

That the instrument is genuine and in all respects what it purports to be; that he has a good title to it; that all parties had capacity to contract and in addition that on due presentment the instrument shall be paid.

The clear reasoning of the learned District Judge must be recognized as correct and unanswerable.

SECOND POINT.

> "Where titles are of equal dignity the more ancient prevails."
> "Equity follows the law."

"When equities are equal, the first in point of time prevails."

In affirming the decree of the District Court, the Circuit Court of Appeals for the Fifth Circuit, in its opinion, **(211 Fed., 337)** said:

> "In these cases we find no error in the rulings and opinion of the District Court, **the fact that the cotton in dispute was found in the possession of the bankrupts is controlling.** Therefore, the duty of the bankruptcy court was to turn it over to the rightful possessor, the Canal-Louisiana Bank & Trust Company, the only lawful pledgee of the same."
>
> "If the cotton, or the warehouse receipts even, had been retained by the Commercial National Bank, a different case might have been presented."

The intimation by the appellate Court that possession by the second pledgee **MIGHT** have complicated the case is in recognition and approval of the second ground upon which the Canal-Louisiana Bank & Trust Company claims the cotton. In discussing this view of the case we cannot be regarded as intimating any fault in the opinion of the learned District Judge, for although his opinion was based upon the first ground discussed, he concludes as follows:

> "The Canal-Louisiana Bank & Trust Company invokes the doctrine that where equities are equal the first in order of time must prevail. It may be that their contention is well founded, in view of the facts that their pledge was prior to that of the other bank; that **neither has in its possession the documents pledged to it; and that same have been**

> executed and cancelled. But entertaining the above views, it is unnecessary to consider this question and with regard to it I express no opinion."

It may be well to repeat here the following facts shown by the record:

At the time Dreuil and Company were adjudged bankrupts the cotton was in their possession. Neither bank had possession of the cotton. Neither bank held a negotiable instrument as muniment of title therefor. The Canal-Louisiana Bank & Trust Company held a trust receipt for the inland bill of lading; the Commercial National Bank held a trust receipt for the warehouse receipt. The trust receipts constituted merely documentary evidence in the hands of the pledgees of the cotton, and we must therefore, consider the rights of the claimants under the general law of pledge in Louisiana where the contract was made. This law is well settled, and by it a special bailee of personal property cannot validly pledge the property to the prejudice of his bailor. The second pledgee takes the property **cum onere**.

It is conceded that the Canal-Louisiana Bank & Trust Company was the first pledgee. The law of Louisiana under which law the contract or contracts of pledge were made in this case, contains the following statutory provisions, heretofore quoted, in this brief:

Article 3142 of the Civil Code declares that:

> "The debtor cannot confer on the creditor by the pledge, any further right than he himself has."

And Article 3173 of the Civil Code declares that:

> "The debtor who takes away the pledge without the creditor's consent, commits a sort of theft."

The Canal-Louisiana Bank and Trust Company in delivering the bills of lading to Dreuil and Company upon the latter's trust receipt was following the usual course of business which received legislative sanction in Act 120 of 1910 of the laws of Louisiana, printed in full on the trust receipt, and lost none of its rights as pledgee.

It remains for us but to cite some of the decisions of the Supreme Court of Louisiana elucidating the Statutes.

Perhaps the leading case on the subject of the pledge of personal property by the special bailee without authority to pledge, is that of **Stern Bros. v. Germania-National Bank** reported in the **34th Louisiana Annual, 1119:**

> "Plaintiffs entrusted to the late firm of A. Eimer Bader & Company, for collection merely, certain detached coupons of bonds of the State of Louisiana, said coupons being unconditional obligations of the State to pay to bearer certain sums of money, at dates specified therein, ' ''being six months'' interest on Consolidated Bond' of specified number. These coupons, long after their maturity, were pledged by A. Eimer Bader & Company, to the defendant, to secure a loan of $5,000.00 made to said firm.
>
> "Plaintiffs now sue to recover said coupons or their value.
>
> "There is no controversy as to the essential facts viz: that plaintiffs owned the coupons that Bader & Co. had no authority from plaintiffs to sell or

pledge them, and no other authority except to collect; that they were pledged by Bader & Company for their personal debt, in which plaintiffs had no concern; and that said pledge was made long after the maturity of the coupons.

"The authorities are quite unanimous and entirely convincing, that the purchaser or pledgee of negotiable instruments after maturity, whose rights are derived from one who is not the owner, and who is not authorized to sell or pledge, acquires no title or right thereto or thereupon, as against the true owner. C. C., 2452; Bird v. Cockrem, 28 An., 70; Henderson v. Case, 31 An., 215; Davis v. Bradley, 26 An., 555; Foley v. Smith, 6 Wall (U. S.) 493, (18 L. Ed., 931); Texas v. White, 7 Wall (U. S.) 700, (19 L. Ed., 227); Vermilye v. Adams, 21 Id., 143, (22 L. Ed., 609); Fowler v. Brantly, 14 Pet. (U. S.) 321 (10 L. Ed., 473).

"We have carefully considered the various grounds on which it is sought to except this case from the application of the above principle.

* * * * * * * * *

"The doctrine is invoked that where one of two innocent parties must suffer, the loss should fall on the one who enabled the third party to commit the fraud. This objection to the application of the principle now under discussion is not new. It has been made, considered and overruled, both by this Court and the Supreme Court of the United States. Foley v. Smith, 6 Wall, 493, (18 L. Ed., 931); Bird v. Cockrem, 28 An., 70.

"It is finally urged that by conferring upon Bader & Company an apparent title or power of disposition, plaintiffs are estopped from asserting title against an innocent third person dealing with such apparent owner. It is evident that plaintiffs

did nothing except put Bader & Company in possession of the coupons for a legitimate purpose, which purpose could not have been effected without such possession. Like possession and like apparent ownership necessarily existed in all the cases quoted by us, otherwise the sale or pledge could not have been made. The authorities relied on by defendant rest on other and peculiar circumstances not necessary to be here stated.

"In conclusion, it must be admitted that the principle invoked by us, in its application to transfers, not only of past due negotiable instruments, but of all personal property, by the possessors and apparent owners thereof, undoubtedly exposes innocent dealers to great danger of fraud and wrong; yet there are many equitable considerations which weigh equally in its favor; and the law, as it exists has been established, after a full and fair consideration of the equities on both sides."

The authorities are also carefully reviewed by the Supreme Court of Louisiana in the case of **J. B. Lallande v. His Creditors, 42 La. An., 705,** where it was held:

> **"Though a factor may sell and bind his principal, he cannot pledge the goods as a security for his own debt, even though there have been bills of lading isued to him therefor. The principal may, in such case, recover the goods of the pawnee, and HIS ignorance that the factor held the goods in the character of factor is no excuse.**
>
> "The doctrine that a factor cannot pledge is sustained so strictly that it is admitted he cannot do it by an endorsement and delivery of the bill of lading, any more than by delivery of the goods themselves."

The facts and the contentions of the parties appear from the opinion, as follows:

> "This is a controversy arising over the proceeds of 50 bales of cotton which J. Y. Webb shipped by rail from Minden, Louisiana to J. B. Lallande, of New Orleans, and therefor issued bills of lading to the consignee, and which he pledged to the Whitney National Bank for a loan of $2,100.00.
>
> "Webb claims ownership of the cotton and avers that it was consigned to Lallande, as his factor, for sale, and that he was without right or authority to pledge it as he did. The bank claims that it made the loan to Lallande on the faith of the bills of lading which Webb isued to Lallande as consignee.
>
> "The contention of the bank is (1) that the bills were unqualified by any restriction and that the cotton covered by them was owned by Lallande, and that it acted on the faith of his ownership in making the loan; that, at the time of said loan, Lallande was a merchant in good standing and of high credit, and it acted in good faith and without any knowledge or suspicion of any rights or equities in favor of Webb; (2) that, under said bills of lading the pledge was valid and binding, under the express provisions of Sections 2482 and 2485 of the Revised Statutes; (3) that Webb, having taken out such bills of lading and thus consigned the cotton to Lallande, placed a written title in his hands and enabled him to hold himself out to the world as owner and to deal with it as such, and he is thereby estopped from setting up any rights of his own as opposed to its rights of pledge.
>
> "On these issues the case went to trial, and there was judgment in favor of plaintiff in rule, and the bank has appealed.

"The doctrine that a factor cannot pledge is sustained so strictly that it is admitted he cannot do it by endorsement and delivery of the bill of lading any more than by delivery of the goods themselves.

"To pledge the goods of the principal is beyond the scope of the factor's power; and every attempt to do it under the color of a sale is tortious and void. **2 Kent. p. 626.**

"No statute is to be construed as altering the common law, further than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express. Especially is so great an innovation as would be placing bills of lading on the same footing in all respects with bills of exchange, **not** to be inferred from words that can be fully satisfied without it. **The law has most carefully protected the ownership of personal property, other than money, against misappropriation, by others than the owner, even when it is out of his possession. This protection would be largely withdrawn if the misappropriation of its symbol or representative could avail to defeat the ownership, even when the person who claims under a misappropriation had reason to believe that the person from whom he took the property had no right to it.** * * *"

See, also, **Denis on Contracts of Pledge, p. 190.**

The following authorities are pertinent as showing that the Canal-Louisiana Bank & Trust Company was without negligence in constituting Dreuil and Company its special bailee for the purposes designated in the trust receipt, and that the bank's action did not effect detrimentally its rights as pledgee.

In **Jacquet v. His Creditors, 38 La. An., 863:**

> "The contract of pledge stipulated that the property pledged was placed in the possession of one Joaquin Polet, as the agent of the pledgee, and he (Polet) intervened in the act for the purpose, as expressed, 'of accepting the trust' and it is shown by the evidence that to him was delivered the key of the building containing the machinery, etc., pledged. He (Polet) testified that he exercised control over the property for about ten months, and took care of it and cleaned the machinery. He was paid for his services as keeper. It is shown that by permission of the keeper and consent of Curtis, Jacquet & Vallette, used the machinery at times in their tobacco business, and that Polet was one of their employees. We do not think, however, that these facts derogated from the validity of the pledge. The possession of the property by the pledgee as shown, was sufficient. **C. C., 3162; Weems v. Moss Company, 33 An., 973.** In fact the property pledged may be left in the possession of the debtor himself, provided his possession is precarious and clearly for account of his creditor. **Conger v. City, 32 An., 1250.**"

Mr. Story, in his work on bailment, **Section 299**, says:

> "So, if it be delivered back to the owner in a new character, as for example as a special bailee or agent in such a case the pledgee will still be entitled to the pledge, not only as against the owner, but also as against third persons; for under such circumstances, the possession is perfectly consistent with the existence of the original right of the pledgee."

In **Weems v. Delta Moss Company, 33 La. An., 973,** it was held by the Supreme Court of Louisiana that property pledged may be in possession of third persons and it makes no difference if said third person be an employee of the pledgor. See, also, **38 La. An., 863.**

Troplong, in treating of **Article 2076 of the Code Napoleon, Article 3162 of the Revised Code of Louisiana** being a repetition thereof, gives an example of a merchant in Baune having pledged 60,000 bottles of Burgundy wine to a merchant of Baden as security for a debt—the wine having been delivered to an agent of the pledgee, it having been agreed that the pledgor should give it necessary attention and care. It so happened that the agent of the pledgee occasionally left the key to the vault in the possession of the pledgor and on one occasion the latter removed some of the bottles of wine to his own premises, and subsequently to his surrender in insolvency the syndic insisted that the pledge was null and void on that account—the debtor and pledgor not having been dispossessed of the wine. But the validity of the pledge was maintained as against the creditors of the pledgor, in insolvency. **Troplong Nantissement, 311.**

In **Clark v. Iselin, 21 Wall, 360,** this Court held that the pledge was not vitiated by the pledgee returning the collaterals pledged to the pledgor for collection.

In the case of **White v. Pratt, 5 Denio, N. Y.,** a case of the same effect, the Court held that in such case the pledgor acts as a servant or agent of the pledgee and the character of the security is not changed.

In **Century Throwing Company v. Muller, 197 Fed. Rep., 252,** it was held that:

> "A bank which, under an arrangement made in accordance with well established commercial custom, furnished credit for the purchase of goods for import by acceptance of a draft at six months, and took the bills of lading in its own name, became the legal owner of the goods, and not merely a pledgee, and its title was not divested by permitting the company for which the importation was made to take the goods on signing a trust receipt binding it to hold the same or their proceeds for the bank until it paid the purchase price. In such case, where the transaction was in good faith, it is not fraudulent in law, and the courts will recognize and protect the bank's title as against one to whom the company in possession attempted to pledge the goods.
>
> "The throwster's lien given by **3 Comp. St. N. J., 1910, p. 3140, par. 60,** on goods coming into their possession for treatment for accounts due them for work done on 'other goods of such owner or owners' must be limited to actual ownership, as distinguished from apparent ownership due to possession, and a bailee cannot subject goods in his possession to a lien for work done on other goods in which the owner of the bailed goods had no interest."

The Court's opinion reads in part as follows:

> "**The customary character of the transaction is attested, not only by the record before us, but by the judicial notice elicited in many modern cases more or less similar to the present one.** We can readily understand how the business of foreign im-

portation by merchants and especially by manufacturers, is faciliated and enlarged by making available to those of small means the credit of banking capital. The business of importation is thus extended, by not being confined to those concerns having large capital and established foreign credit.

"The exigiences of trade and commerce have caused many exceptions to be made to the rigid rule founded on the policy underlying the statute of frauds by which the divorce of title from possession is declared either evidence of fraud or to be fraudulent **per se.** Accordingly, Courts consistently recognize and protect the title of the real owner of goods placed by him in the hands of a bailee for a legitimate purpose, and will protect it, even where such bailee is clothed with all the indicia of ownership that physical possession can give, and undertakes, in violation of his contract, to dispose of the goods to an innocent purchaser. Cases of conditional sale and other bailments, where title has never passed from the real owner and where the possession of the bailee is not inconsistent with the real contract between the parties, are familiar illustrations of the law in this regard. In the present case, there can be no doubt that the title to the goods in question passed from the original vendors to the plaintiffs for a well recognized and lawful purpose, viz: to secure the plaintiffs by the acquirement and retention of said title against failure on the part of the Silk Company to make good the acceptance by the plaintiffs of the purchase money draft at its maturity. Nor can it be seriously questioned that the plaintiffs could legally deliver possession of these goods to the manufacturer, for whose benefit the purchase had been made in Japan, without parting

with the title to the same, and measurably retain the security intended to be given the plaintiffs by virtue of the original undertaking, provided always that the possession be consistent with the agreement between the parties for that purpose. The law has long been settled that such title and ownership will be recognized, so far as they are necessary to the security they were intended to give for the payment of the purchase money of the goods bailed, and this, although a dishonest bailee is thereby enabled, by violating the contract of bailment, to avail himself of such possession to represent the property as his own, and thus practice a fraud on third persons with whom he deals in respect thereto. But such cases are an exception to the ancient rule founded on the policy of the statute of frauds, touching the divorce of actual title and possession, the doctrine being, as held in New Jersey, that possession in one person which is consistent with an agreement between the parties is not inconsistent with the actual title in another, which will be supported for the purposes stated in the contract. As said by the Supreme Court of New Jersey in **Cole v. Barry, 42 N. J. Law, 308, 314, (36 Am. Rep., 511)**, in speaking of a conditional sale:

" 'Where the vendee is in possession under a conditional contract of sale he has no property to convey to a purchaser, and the vendor's title never having been divested, he may reclaim the property if the condition be not performed, even as against a purchaser for value in good faith.'

"Many cases are cited by the Courts in New Jersey and other States, in support of this doctrine, and in conclusion the Court says:

" 'Possession is evidence of title, but is not title, and in this State (New Jersey) possession by a

party, not in accordance with the actual state of the title, is not **per se** fraudulent.'

"There is no doubt at all that the understanding of the parties, as evidenced by what they did, the documents passing between them, the evident purpose of the transaction, and the well understood commercial custom above referred to, was that the title to the goods in question should pass from the vendor directly to the plaintiffs, and should there remain for his protection until the payment had been made for the invoices by the Silk Company. That this is the law of the contract we are here considering, is well stated by the Court of Appeals of the great commercial State of New York in the leading case of **Moors v. Kidder, et al., 106 N. Y., 32, 40, 12 N. E., 818.**"

IN CONCLUSION.

Counsel for appellants has quoted numerous cases in an attempt to support his contention, but a careful analysis will show that whenever the Courts of last resort have passed upon the questions presented in this case, they have uniformly held against the second pledgee, except where, as **In re Richheimer, 221 Fed. Rep., 16,** a local statute to the contrary controls. The syllabus of the **Richheimer case** reads in part as follows:

> "The effect and validity of the bankers' title was governed by the laws of Illinois and not by those of Louisiana. * * *

> "Under the rule and policy of Illinois that possession is one of the strongest evidences of title to personal property and cannot be rightfully separated from the title, except in the manner pointed out by statute and that without notice to the world the real ownership cannot be in one person and the ostensible ownership in another, and under Hurd's Revised Statutes, 111, 1913, Chapter 95, Par. 1, providing that no mortgage, trust deed, or other conveyance of personal property having the effect of a mortgage or lien shall be valid as against third persons unless possession shall be delivered to and remain with the grantee, or unless the instrument shall be acknowledged and recorded, and under the Bankruptcy Act, * * * the title of the bankers could not prevail against the importer's trustee in bankruptcy as to the coffee not covered by negotiated warehouse receipts."

Likewise in **New York Security & Trust Co. v. Lippman & Co., 157 N. Y., 551,** the decision was predicated upon the New York Factor's Act, Laws of 1830, Chapter 179, providing that:

> "Every factor or agent entrusted with the possession of a bill of lading or other document, or of merchandise for sale, as security, shall be deemed the owner so as to give validity to the sale of or advance upon the same."

Inasmuch as the pledges to the Canal-Louisiana Bank & Trust Company and to the Commercial National Bank were Louisiana contracts, the law of Louisiana as announced in the cases of **Stern Brothers v. Bank** and **Lallande v. His Creditors,** cited supra, is applicable and must prevail.

The cases in other jurisdictions, cited by appellant, which are based upon statutes which differ from the provisions of Louisiana's Code, clearly have no bearing on the instant case.

The judgment of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted,

HENRY MOONEY,

Counsel for Canal-Louisiana Bank and Trust Company, Appellee.